

United States
Circuit Court of Appeals
For the Ninth Circuit.

FLOTATION SYSTEMS, INC., a corporation, and
UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a corporation,
Appellants,
vs.

UNITED STATES for use of ANDREW POLLIA,
T. G. SHANNON and B. W. MACKIE, co-
partners doing business under the fictitious
name and style of Shanmae Co.,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

FEB 24 1943

No. 10359

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UNITED STATES FIDELITY AND GUAR-
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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San Francisco, California

Attorneys for Plaintiffs in Intervention
and Appellees.

District Court of the United States for the Northern
District of California, Southern Division

Civil Action File No. 21905W

UNITED STATES for use of ANDREW POL-
LIA, Plaintiff,

vs.

FLOTATION SYSTEMS, INC., a corporation,
UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a corporation, FIRST
DOE COMPANY, a corporation, SECOND
DOE, THIRD DOE, FOURTH DOE,
Defendants.

COMPLAINT—BREACH OF CONTRACT

Plaintiff complains of defendants and for cause
of action alleges:

I

That defendant Flotation Systems, Inc., a corporation, is a corporation duly and regularly licensed to transact business in the State of California.

II

That defendant United States Fidelity and Guaranty Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly and regularly licensed to transact business in the State of California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

III

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, was awarded a contract by the United States of America, more particularly identified and known as NYO #3850, Navy Department of the United States of America, for the installation of the gasoline storage and distribution system at the Naval Air Station, located in the City of Alameda, County of Alameda, State of California.

IV

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, as principal, and the defendant United States Fidelity and Guaranty Company, a corporation, as surety, pursuant to its corporate powers and license, executed and delivered to the Navy Department of the United States of America, a certain Security Bond, in the penal sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00), guaranteeing the faithful performance by the defendant Flotation Systems, Inc., a corporation, of said contract, in the payment of all claims of laborers and material men and sub-contractors, engaged by the defendant Flotation Systems, Inc., a corporation, in the performance of said contract.

V

That on or about the 28th day of May, 1940, the defendant Flotation Systems, Inc., a corporation en-

tered into a certain sub-contract with Andrew Pollia, whereby and wherein it was agreed that the said Andrew Pollia was to install the gasoline and water storage and distribution systems in said Naval Air Station, all of which work was a part of the work described in the contract between said defendant Flotation Systems, Inc., a corporation, and the United States of America, as hereinabove alleged; that subsequent to said 28th day of May, 1940, and in addition to the services and work covered by said sub-contract and upon the [2] express request of defendant Flotation Systems, Inc., a corporation, and in accordance with extra work orders issued by said defendant Flotation Systems, Inc., a corporation, Andrew Pollia performed extra services and work and delivered material in regard thereto, and in the installation of fittings inside of gasoline pits, patching and wrapping pipe lines and installations in the water control pits; that the reasonable value of the materials supplied by and services performed by said Andrew Pollia was and is in the total sum of Twenty-six Thousand, Nine Hundred Eight and 70/100 Dollars (\$26,908.70).

VI

That all of said services and work done by the said Andrew Pollia has been completed according to plans and specifications and in good workman like order; that defendant Flotation Systems, Inc., a corporation, has paid Andrew Pollia on account of said services and work, the amount of Seventeen

Thousand, One Hundred Ninety-one and 49/100 Dollars (\$17,191.49); that Andrew Pollia has not been paid in full therefore; that more than Ninety (90) days has elapsed after the day on which the last of the labor was done or performed or material furnished or supplied; that the balance thereof, unpaid at the institution of this suit, is the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars (\$9,717.21).

VII

That the true names of defendants sued herein as First Doe Company, a corporation, Second Doe, Third Doe, Fourth Doe, are not known to plaintiff at this time and plaintiff prays that when their true names are ascertained the same may be inserted herein in lieu of said fictitious names.

Wherefore, plaintiff prays for judgment against defendants and each of them, in the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars (\$9,717.21), for costs of suit, [3] and for such other and further relief as may seem just in the premises.

J. J. DOYLE,

Attorney for Plaintiff.

State of California,

City and County of San Francisco—ss.

Andrew Pollia, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled

action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated upon information or belief and as to those matters that he believes it to be true.

ANDREW POLLIA.

Subscribed and sworn to before me this 21st day of June, 1941.

[Seal] EMMA L. MacHUGH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires January 15, 1944.

[Endorsed]: Filed June 21, 1941. [4]

[Title of District Court and Cause.]

BILL OF PARTICULARS

Re: Gasoline Storage and Distribution System, Naval Air Station, Alameda, California. Spec. #9505.

Contract Price	\$16,040.00
Extra—Wrapping joints & fittings as per agreement	663.60
“ Welding joints	195.90
“ Rental of crane \$8.00 per hr.....	164.00
“ Rental of crane \$8.00 per hr.....	404.00
“ Patch pipe wrapping—July & Aug.	1,760.00
“ Patch pipe wrapping—Sept.	385.00
“ Wrapping pipe	36.00

“	Distributing Gasoline & Water Piping	375.00
“	Installing temporary water line for testing	275.00
“	Making test caps	48.00
“	Cutting and fitting water pipe.....	250.00
“	Use of Civil Engineer	25.00
“	Order #1215	241.00
“	Order #273	770.00
“	Order #280	165.00
“	Order #1207	208.00
“	Letter dated Aug. 23, 1940.....	4,903.20
		<hr/>
		\$26,908.70

[5]

Credits

Payment #1	\$ 7,600.00	
“ #2	4,737.49	
Payroll advanced	1,544.00	
On account of payment due 9-10-40	1,000.00	
Omissions for tile drain.....	2,300.00	
		<hr/>
	\$17,191.49	\$17,191.49

Balance due 9,717.21

Dated: July 31, 1941.

J. J. DOYLE,

Attorney for Plaintiff.

(Receipt of Service.)

[Endorsed]: Filed Aug. 1, 1941. [6]

[Title of District Court and Cause.]

ANSWER OF FLOTATION SYSTEMS, INC.,
AND UNITED STATES FIDELITY AND
GUARANTY CO.

Now come the defendants, Flotation Systems, Inc., and United States Fidelity and Guaranty Co., and for answer to the complaint of plaintiff on file herein, admit, deny and allege as follows:

I

Admit all the allegations contained in Paragraph I, II, III, and IV of Plaintiff's complaint.

II

Admit that on the 28th day of May, 1940, plaintiff and defendant Flotation Systems, Inc., entered into a sub-contract, and in this connection said defendant alleges that a copy of said contract is hereto attached, marked Exhibit "A", and by this reference made a part hereof for all purposes.

III

Answering that part of Paragraph V, wherein it is alleged [7] that plaintiff performed certain extra work and services and delivered materials in regard to work to be done in the installation of fittings inside of gasoline pits, said defendant denies that the work of installation of fitting inside of the gasoline pits, wrapping and patching pipe lines and installations in the water control pits is or ever was extra work. In this connection, de-

defendant alleges that said work was specified in the plans and specifications and in the contract entered into by defendant and plaintiff; and defendant further alleges that no order of any kind or character for the doing of this work was ever by the defendant Flotation Systems, Inc., given to plaintiff, but that plaintiff performed said work by reason of the fact that it was contained in his sub-contract and in the plans and specifications.

Denies that the reasonable value of the materials supplied and work performed by plaintiff was and is the sum of Twenty-six Thousand Nine Hundred Eight and 68/100 (\$26,908.68), or any other sum in excess of the sum of Eighteen Thousand Seven Hundred Thirty-nine and 68/100 (\$18,739.68); and in this connection said defendant alleges that the sum of Eighteen Thousand Seven Hundred Thirty-nine and 68/100 (\$18,739.68) was the agreed price by and between plaintiff and this defendant for the doing of said work and the furnishing of said materials under and pursuant to the terms of the contract, and the extra work and materials agreed upon and authorized by order therefore.

IV

Answering Paragraph VI, denies that plaintiff completed all of the work according to the plans and specifications, and in this connection said defendant alleges that there was an omission from the plans and specifications and in the contract of the installation of the tile drain in the amount of Twenty-three Hundred Dollars (\$2,300.00); that

in addition thereto plaintiff failed to do certain work and to purchase certain materials, and defendant Flotation Systems, Inc., was compelled to and did purchase said materials, and was compelled to and did complete said work; that [8] the amount thereof is the sum of Seven Hundred Five and 72/100 Dollars (\$705.72); that a list thereof is hereto attached; marked Exhibit "B", and by this reference made a part hereof for all purposes.

V

Denies that plaintiff has not been paid any moneys in excess of Seventeen Thousand One Hundred Ninety-one and 49/100 Dollars (\$17,191.49); and in this connection said defendant alleges that plaintiff has been paid the sum of Seventeen Thousand Two Hundred Seventy-two and 04/100 Dollars (\$17,272.04).

VI

Denies that there is now due, owing and unpaid to plaintiff the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars (\$9,717.21) or any other sum, or at all; and in this connection said defendant alleges that plaintiff contracted certain labor and materials bills in the doing of the work under and pursuant to said contract, and that said labor and materials bills have not been paid by plaintiff to the parties entitled thereto, and that said parties have served notice upon defendant of the nonpayment of said bills and demanded that the amount thereof be withheld by defendant and paid to the prospective parties;

that said bills amount to the sum of One Thousand Seven Hundred Ninety-one and 20/100 Dollars (\$1,-791.20); that a list thereof is hereto attached, marked Exhibit "C" and by this reference made a part hereof for all purposes.

Wherefore defendant prays that plaintiff take nothing by his actions, but that it be hence dismissed with its costs.

JOHN D. HARLOE,

Attorney for Defendant. [9]

State of California,

City and County of San Francisco—ss.

John D. Harloe, being first duly sworn, deposes and says:

I am the Attorney for Flotation Systems, Inc., and he makes this verification for and on behalf of said Flotation Systems, Inc., by reason of the fact that said defendant is absent from the City and County of San Francisco, the County wherein your affiant has his office, and that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to such matters that he believes it to be true.

JOHN D. HARLOE.

Subscribed and sworn to before me this 8th day of August, 1941.

(Seal)

MARK E. LEVY,

Notary Public in and for the City and County of San Francisco, State of California. [10]

EXHIBIT "A"

May 28, 1940.

Re: Gasoline Storage and Distribution and Distribution System Naval Air Station, Alameda, Calif. Specification No. 9505.

Flotation Systems, Inc.,
4031 Goodwin Avenue
Los Angeles, California

Gentlemen:

For the sum of Sixteen Thousand and Forty Dollars (\$16,040.00), I propose to furnish the following labor and material, all in strict accordance with the Bureau of Yards and Docks Specification 9505.

Item 1: Complete installation of all gasoline pipe line as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, welding, and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D, (8), and E (16). It is understood that Flotation Systems, Inc. will furnish all necessary pipe and fittings, and I will furnish all welding materials and equipment.

Item 2: Complete installation of all Cast Iron U. S. Joint Water lines as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, connection and

testing of all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc., will furnish all pipe, fittings, follower rings, and gas-kets, and that I will furnish the 10" rock base under the pipe lines in the trench.

Item 3: Complete Installation of a 12" terra-cotta drain pipe, to be installed in lieu of the 8" drain line as covered by the plans accompanying Spec. 9505, and including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, connection of joints, and all connections to Pit Boxes C-2 (2) and D (8). It is understood that I will furnish the 12" terra-cotta pipe, all fittings required, and the 10" rock fill under pipe in trenches. It is further understood that in the event any excavating below a depth of six feet is required on this line, I will receive \$1.60 per cubic yard of excavation done below this depth, in addition to the amount stipulated above.

Item 4: Painting of all piping installed by us inside of pit boxes A, B, C, D, and E.

I agree to wrap all joints and fittings installed under Item 1 above, for the following prices, to be paid in addition to the amount stipulated above:

6" joints and fittings @.....	\$2.10 each
5" joints and fittings @.....	1.70 each
4" joints and fittings @.....	1.40 each
3" joints and fittings @.....	1.10 each

[11]

I agree to begin work within three days (holi-

days excluded) after acceptance of this agreement, and to complete all work after acceptance of this agreement and to complete all work covered by this agreement, within forty-five (45) days after acceptance of this agreement; and that in the event of my failure to do so, Flotation Systems, Inc., will have the right to proceed with the work and charge the cost of completing same against the amount stipulated in this agreement.

Terms are to be payments monthly on the basis of 90% of the work completed, and the balance of 10% to be paid upon completion of work.

Respectfully yours,

ANDREW A. POLLIA.

Accepted by

EUGENE CERLAT.

Date 5-28-40. [12]

EXHIBIT "B"

20 Hose Reels, cost of installation.....	\$ 150.00
50# lead purchased June 29, 1940 @ 0.04/lb.....	2.00
Moving rock at Boat House with Bigge Crane, July 10:	
Crane, 2 hours, at 6.00.....	12.00
Crane oper. 2 hours, at 1.67.....	3.33
Crane oiler 2 hours, at 1.17.....	2.33
Total.....	17.66
Moving rock at Boat House with Western Crane, Aug. 19:	
Crane, 2 hours, at 6.00.....	12.00
Crane Oper. 2 hours, at 1.67.....	3.33
Crane oiler, 2 hours, at 1.16.....	2.33
Total.....	17.66

U. S. for Use of Andrew Pollia

15

Lumber purchased July 11, E. E. Wood Lbr. Co. and charged to Flotation Systems.....	4.26
Ditto, purchased July 1.....	62.29
Ditto, purchased June 26.....	39.35
Telephone Call, Alameda to L. A. August 10.....	2.25
Telephone Call, L. A. to Alameda, Sept. 4.....	2.45
Ditto on Sept. 10, 1940.....	2.25
Ditto on Sept. 13, 1940.....	2.25
Load of Red Rock, Sept. 3, 7 yard at 1.00.....	7.21
Cost of completing and testing work for which we were billed (above) including labor and equipment rental (see itemization).....	445.89
Estimated cost of replacing and repairing tools and equipment borrowed and lost or damaged by employees of Pollia.....	100.00
<hr/>	
Total.....	705.72
	[13]

EXHIBIT "C"

A. R. Reed Co.....	\$ 487.52
Western Crane Co.....	44.15
Thomas Welding Co.....	182.50
E. K. Wood Lumber Co.....	4.82
J. Catucci	746.59
<hr/>	
Total.....	\$1,365.58

(Receipt of Service.)

[Endorsed]: Filed Aug. 8, 1941. [14]

[Title of Court and Cause.]

ORDER GRANTING MOTION TO
INTERVENE

The motion of T. G. Shannon and B. W. Mackie, copartners, doing business under the fictitious name and style of Shanmac Co., to intervene in the above entitled action under Title 40 U. S. C. A. Sec. 24a.c. Federal Rules of Civil Procedure, and notice having come on regularly for hearing this day, and it being represented by counsel for said plaintiffs in intervention that the defendants in intervention above named consent to the making of an order granting leave to intervene as prayed in said motion;

Now Therefore, it is ordered that the motion of said plaintiffs in intervention to intervene herein be and it hereby is granted and plaintiffs in intervention be and they hereby are granted leave to file their complaint in intervention and thereafter appear in said action as plaintiffs in intervention in such manner as they may be advised.

Dated September 29th, 1941.

MARTIN I. WELSH,

United States District Judge.

[Endorsed]: Filed Sep. 29, 1941. [15]

In the Southern Division of the United States
District Court for the Northern District of
California.

Civil Action File Number 21905W

UNITED STATES for use of ANDREW POL-
LIA, Plaintiff,

vs.

FLOTATION SYSTEMS, INC., a corporation,
UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a corporation, FIRST
DOE COMPANY, a corporation, SECOND
DOE, THIRD DOE and FOURTH DOE,
Defendants.

T. G. SHANNON and B. W. MACKIE, copartners
doing business under the fictitious name and
style of SHANMAC CO.,
Plaintiffs in Intervention,

vs.

ANDREW POLLIA, FLOTATION SYSTEMS,
INC., a corporation, UNITED STATES FI-
DELITY AND GUARANTY COMPANY, a
corporation, FIRST DOE COMPANY, a cor-
poration, SECOND DOE, THIRD DOE and
FOURTH DOE,
Defendants in Intervention.

COMPLAINT IN INTERVENTION UNDER
TITLE 40 U.S.C.A., SEC. 24a.c. FEDERAL
RULES OF CIVIL PROCEDURE.

[16]

Now come plaintiffs in intervention above named and after leave of court first had and obtained, file this, their Complaint in Intervention and for cause of action against defendants in intervention, allege as follows, to wit:

I.

That defendant in intervention Flotation Systems, Inc., a corporation, is a corporation duly and regularly licensed to transact business in the State of California.

II.

That defendant in intervention United States Fidelity and Guaranty Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the state of Maryland and is duly and regularly licensed to transact business in the state of California.

III.

That on or about the 22nd day of January, 1940, the defendant in intervention, Flotation Systems, Inc., a corporation, was awarded a contract by the United States of America, more particularly identified and known as NYO #3850, Navy Department of the United States of America, for the installation of a gasoline storage and distribution system at the naval Air Station located in the city of Alameda, county of Alameda, state of California.

IV.

That on or about the 22nd day of January, 1940, the defendant in intervention Flotation Systems, Inc., a corporation, as principal and defendant in intervention United States Fidelity and Guaranty Company, a corporation, as surety, pursuant to its corporate powers and license, executed and delivered to the Navy Department of the United States of America a certain Security Bond in the penal sum of One Hundred Seventy-Five Thousand Dollars (\$175,000.00), guaranteeing the faithful [17] performance by the defendant in intervention Flotation Systems, Inc., a corporation, of said contract, in the payment of all claims of laborers and material men and sub-contractors engaged by Flotation Systems, Inc., a corporation, in performance of said contract.

V.

That on or about the 28th day of May, 1940, the defendant in intervention Flotation Systems, Inc., a corporation, entered into a certain sub-contract with defendant in intervention Andrew Pollia whereby and wherein it was agreed that the said Andrew Pollia was to install the gasoline and water storage and distribution system in said Naval Air Station all of which work was a part of the work described in the contract between said defendant in intervention Flotation Systems, Inc., a corporation, and the United States of America as hereinabove alleged.

VI.

That subsequent to said 28th day of May, 1940, and in addition to the service and work covered by said contract and upon the express request of defendant in intervention Flotation Systems, Inc., a corporation and in accordance with work orders issued by said defendant in intervention Flotation Systems, Inc., a corporation, defendant in intervention Andrew Pollia performed extra services and work of an extent and for a consideration unknown to plaintiffs in intervention.

VII.

Plaintiffs in intervention further allege that in the performance of the said sub-contract hereinabove referred to and in the performance of the extra work and services hereinabove referred to, defendant in intervention Andrew Pollia, with the express knowledge and consent of defendant in intervention Flotation Systems, Inc., a corporation, hired and took from [18] plaintiffs in intervention, for use in the performance of said work, two certain Northwest Power Draglines and Cranes at an agreed rental therefor of Seven Dollars (\$7.00) per hour plus a payment of overtime to the operator thereof.

VIII.

That for said taking, hiring and use of said Northwest Power Draglines and Cranes, defendants in intervention became indebted to the plaintiffs in intervention in the sum of Four Thousand

Six Hundred Fifty-Two Dollars and ninety-five cents (\$4,652.95), no part of which has been paid save and except the sum of Three Thousand Six Hundred Four Dollars and twenty-two cents (\$3,604.22) and there is now due, owing and unpaid from defendants in intervention to plaintiffs in intervention, the sum of One Thousand Forty-Eight Dollars and seventy-three cents (\$1,048.73) which sum, though demanded, said defendants in intervention and each of them fail, refuse and neglect to pay.

IX.

That prior to the bringing of this action, plaintiffs in intervention herein prepared, signed and acknowledged pursuant to the provisions of Sections 2466 and 2468 of the Civil Code of the State of California, their certificate of doing business under the fictitious name and style of Shanmac Co. and filed said certificate with the County Clerk of the City and County of San Francisco, State of California in which the principal place of business of said copartnership is situated and caused said certificate to be published once a week for four (4) successive weeks in a newspaper published in the city and county of San Francisco, state of California and filed with the County Clerk of said City and County of San Francisco, State of California, their affidavit showing the publication of such certificate. [19]

X.

That within ninety (90) days from the date on which plaintiffs in intervention performed the last of the labor, or furnished or supplied the last of the material, or leased or rented the last of the equipment hereinabove referred to, plaintiffs in intervention gave written notice of their claim against defendant in intervention Andrew Pollia to defendant in intervention Flotation Systems, Inc., stating therein with substantial accuracy the amount claimed and the name of the party to whom such equipment was furnished and for whom the labor in reference thereto was done or performed.

Wherefore, plaintiffs in intervention prays judgment against defendants in intervention and each of them in the sum of One Thousand Forty-Eight Dollars and seventy-three cents (\$1,048.73) together with interest thereon from date at legal rate, for costs of suit and for such other relief as may be just and meet in the premises.

TORREGANO & STARK,
By CHARLES M. STARK,
Attorneys for Plaintiffs in
Intervention. [20]

United States of America,
Northern District of California,
City and County of San Francisco—ss.

T. G. Shannon, being first duly sworn, deposes and says:

That he is one of the plaintiffs in intervention

in the above entitled action; that he has read the foregoing Complaint in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein alleged upon information and belief, and as to those matters, that he believes it to be true.

(Sgd) T. G. SHANNON.

Subscribed and sworn to before me this 13th day of September, 1941.

(Seal) (Sgd) LOUIS WIENER,

Notary public in and for the city and county of San Francisco, state of California.

[Endorsed]: Filed Sept. 29, 1941. [21]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVEN-
TION UNDER TITLE 40 U.S.C.A., SEC. 24
a.c. FEDERAL RULES OF CIVIL PROCE-
DURE.

[22]

Now come the defendants, Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, and for answer to the Complaint of plaintiff in intervention, admit, deny and allege as follows:

I

Admit all the allegations contained in Paragraph I, II, III, IV, V and VI, of the Complaint of plaintiff in intervention.

II

Denies that Andrew Pollia, as alleged in Paragraph VII, in plaintiff's Complaint in intervention, did with the express knowledge and consent of this defendant, hire and take from plaintiff in intervention two Northwest Power Draglines and Cranes, at an agreed rental therefor, of Seven Dollars, (\$7.00), per hour plus payment of overtime to the operator thereof, and in this connection said defendants in intervention allege; that they have or had no knowledge of the hiring of plaintiff in intervention by said Andrew Pollia.

III

Deny that these defendants in intervention became indebted to plaintiff in intervention in the sum of Four Thousand Six Hundred Fifty-Two Dollars and Ninety-Five Cents (\$4652.95), and that there is now due, owing and unpaid to plaintiff in intervention, the sum of One Thousand Forty-Eight Dollars and Seventy-Three Cents, (\$1048.73). Defendants in intervention allege that they have not sufficient information or belief to enable them to answer said allegations and basing their denial on those grounds, deny each and every, all and singular of said allegations, and deny that plaintiff in intervention has demanded of these defendants payment to them of said sum of One Thousand Forty-Eight Dollars and Seventy-Three Cents, (\$1048.73).

IV

Deny that within ninety (90) days, or at any other time, or [23] at all, after the furnishing of the labor and material, as alleged in Paragraph X, that plaintiff in intervention gave written notice to the defendants in intervention, or either of them, of said alleged claim against Andrew Pollia.

Wherefore these defendants in intervention pray, that said plaintiff in intervention take nothing against them, but that they have judgment for their costs herein incurred.

JOHN D. HARLOE,

Attorney for Defendants.

State of California,

City and County of San Francisco—ss.

John D. Harloe, being first duly sworn, deposes and says:

I am the Attorney for Flotation Systems, Inc., and he makes this verification for and on behalf of said Flotation Systems, Inc., by reason of the fact that said defendant is absent from the City and County of San Francisco, the County wherein your affiant has his office, and that he has read the foregoing Answer, and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to such matters that he believes it to be true.

JOHN D. HARLOE.

Subscribed and sworn to before me this 8th day of October, 1941.

(Seal) MARK E. LEVY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Oct. 8, 1941. [24]

[Title of Court and Cause.]

MEMORANDUM DECISION

This is an action to recover an alleged balance due upon a written sub-contract for service to be rendered and material to be furnished in connection therewith and for certain alleged extra services and materials rendered and supplied at the request or direction of Defendant, Flotation Systems, Inc. Plaintiffs in Intervention pray for judgment against both Plaintiff and Defendants as Defendants in Intervention for an alleged balance due for the use of certain draglines and cranes furnished for the use of Plaintiff in the services rendered by him as such sub-contractor. The main contract was one entered into by the Defendant, Flotation System Inc., with the United States for the installation of the gasoline storage and distribution system at the Naval Air Station, located in the City of Alameda, State of California.

The controlling question of law presented in this case is the interpretation to be placed upon the

written contract entered into between the Plaintiff, Pollia, and the Defendant, Flotation Systems, Inc. The following quotations therefrom sufficiently present the question:

“Item 1: Complete installation of all gasoline pipe line * * * welding and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2) D, (8) and E (16). * * *

“Item 2: Complete installation of all Cast Iron U. S. Joint Water lines * * *, connection and testing of all joints, and all connections to Pit Boxes * * *. * * *.

“Item 3: Complete installation of a 12" terra-cotta drain pipe * * *, connection of joints and all connections to Pit Boxes C-2(2) and D (8). * * *.

“Item 4: Painting of all piping installed by us inside of Pit Boxes A, B, C, D and E.”

[25]

It is the conclusion of the Court that the expression: “to Pit Boxes,” will not include the cost to Plaintiff of the labor and material supplied by Plaintiff within said “Pit Boxes” other than that expressed in “Item 4;” that Intervenor Plaintiffs are entitled to judgment as prayed for and costs; that Plaintiff is entitled to judgment as prayed for, subject to the judgment for Intervenor if paid by Defendants.

It is ordered that judgments for Plaintiff and Intervener Plaintiffs be entered accordingly.

It is further ordered that the attorney for plain-

tiff submit proposed findings of facts and conclusions of law and forms of judgments and serve copies thereof on attorneys for Defendants and Intervening Plaintiffs.

Dated this 12th day of June, 1942.

FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed Jun. 12, 1942. [26]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on regularly for trial on the 17th, 18th and 20th days of February, 1942, before the court without a jury, a jury trial having been duly waived by the parties and J. J. Doyle, Esq., appearing as attorney for United States for use of Andrew Pollia, plaintiff, and Andrew Pollia, Defendant in Intervention; John D. Harloe, Esq., appearing as attorney for Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, defendants, and defendants in Intervention; Torregano and Stark, Esqs., by Charles M. Stark, Esq., appearing as attorneys for T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in Intervention, and

from the evidence introduced, the court finds the facts as follows:

I

That defendant Flotation Systems, Inc., a corporation, is a corporation duly and regularly licensed to transact business in the State of California.

II

That defendant United States Fidelity and Guaranty Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly and regularly licensed to transact business in the State of California.

III

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, was awarded a contract by the United States of America, more particularly [27] identified and known as NYO #3850, Navy Department of the United States of America, for the installation of the gasoline storage and distribution system at the Naval Air Station, located in the City of Alameda, County of Alameda, State of California.

IV

That on or about the 22nd day of January, 1940, the defendant Flotation Systems, Inc., a corporation, as principal, and the defendant United States Fidelity and Guaranty Company, a corporation, as surety, pursuant to its corporate powers and li-

cense, executed and delivered to the Navy Department of the United States of America, a certain Security Bond, in the penal sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00), guaranteeing the faithful performance by the defendant Flotation Systems, Inc., a corporation, of said contract, in the payment of all claims of laborers and material men and sub-contractors, engaged by the defendant Flotation Systems, Inc., a corporation, in the performance of said contract.

V

That on the 28th day of May, 1940, the defendant Flotation Systems, Inc., a corporation, entered into a certain Sub-contract with Andrew Polia, which is herein set forth:

“May 28, 1940.

Re: Gasoline Storage and Distribution and Distribution System Naval Air Station, Alameda, Calif. Specification No. 9505.

Flotation Systems, Inc.,
4031 Goodwin Avenue
Los Angeles, California

Gentlemen:

For the sum of Sixteen Thousand and Forty Dollars (\$16,040.00), I propose to furnish the following labor and [28] material, all in strict accordance with the Bureau of Yards and Docks Specification 9505.

Item 1: Complete installation of all gasoline

pipe line as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, welding, and testing all joints, and all connections to Pit Boxes A (1), B (1), C-2 (2), D, (8), and E (16). It is understood that Flotations Systems, Inc. will furnish all necessary pipe and fittings, and I will furnish all welding materials and equipment.

Item 2: Complete installation of all Cast Iron U. S. Joint Water lines as covered by plans accompanying Spec. 9505, including necessary excavation, backfill, replacement of red rock surfacing, repairs to any existing roads, connection and testing of all joints and all connections to Pit Boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc. will furnish all pipe, fittings, follower rings, and gaskets, and that I will furnish the 10" rock base under the pipe lines in the trench.

Item 3: Complete installation of a 12" terra cotta drain pipe, to be installed in lieu of the 8" drain line as covered by the plans accompanying Spec. 9505, and including necessary excavation, backfill, replacement of red rock, surfacing, repairs to any existing roads, connection of joints, and all connections to Pit Boxes C-2 (2) and D (8). It is understood that I will furnish the 12" terra cotta pipe, all fittings required, and the 10" rock fill under pipe in trenches. It is further understood that in the event any excavating below a depth of six feet

is required on this line, I will receive \$1.60 per cubic yard of excavation done below this depth, in addition to the amount stipulated above.

Item 4: Painting of all piping installed by us inside of pit boxes A, B, C, D, and E.

I agree to wrap all joints and fittings installed under Item 1, above, for the following prices, to be paid in addition to the amount stipulated above:

6" joints and fittings @.....	\$2.10 each
5" joints and fittings @.....	1.70 each
4" joints and fittings @.....	1.40 each
3" joints and fittings @.....	1.10 each

I agree to begin work within three days (holidays excluded) after acceptance of this agreement, and to complete all work after acceptance of this agreement, and to complete all work covered by this agreement within forty-five (45) days after acceptance of this agreement; and that in the event of my failure to do so, Flotation Systems, Inc., will have the right to proceed with the work and charge the cost of completing same against the amount stipulated in this agreement.

Terms are to be payments monthly on the basis of 90% of the work completed, and the balance of 10% to be paid upon completion of work. [29]

Respectfully yours,

ANDREW A. POLLIA.

Accepted by:

EUGENE CERLAT.

Date: 5-28-40''

That subsequent to said 28th day of May, 1940, and in addition to the services and work covered by said sub-contract and upon the express request of defendant Flotation Systems, Inc., a corporation, and in accordance with extra work orders issued by said defendant Flotation Systems, Inc., a corporation, Andrew Pollia, performed extra services and work and delivered material in regard thereto and in the installation of fittings inside of gasoline pits, patching and wrapping pipe lines and installations in the water control pits; that the reasonable value of the materials supplied and services performed by said Andrew Pollia, was and is the sum of Twenty-six Thousand Nine Hundred Eight and 70/100 (\$26,908.70).

VI

That all of said services and work done by the said Andrew Pollia has been completed according to plans and specifications and in good workman like order; that defendant Flotation Systems, Inc., a corporation, has paid Andrew Pollia on account of said services and work, the amount of Seventeen Thousand One Hundred Ninety-one and 49/100 Dollars (\$17,191.49); that Andrew Pollia has not been paid in full therefore; that more than Ninety (90) days has elapsed after the day on which the last of the labor was done or performed or material furnished or supplied; that the balance thereof, unpaid at the institution of this suit, is the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars (\$9,717.21). [30]

VII

Plaintiffs in Intervention at the request of defendant Andrew Pollia and with the express knowledge and consent of defendant in Intervention, Flotation Systems, Inc., a corporation, hired and took from plaintiffs in Intervention certain drag lines and cranes which were used by Andrew Pollia, defendant in Intervention in performance of his subcontract with Flotation Systems, Inc., a corporation, defendant in Intervention, and that there is now due, owing and unpaid from defendants in Intervention, to plaintiffs in Intervention, the sum of One Thousand Forty-eight and 73/100 Dollars (\$1048.73).

VIII

That within ninety (90) days from the date on which plaintiffs in intervention hired, took and used in the performance of work herein plaintiffs in intervention gave written notice of their claim against defendant in intervention Andrew Pollia and to defendant in intervention, Flotation Systems, Inc., a corporation, stating the amount claimed, the name of the party to whom such equipment was furnished and for whom the labor in reference thereto was done or performed.

IX

That Flotation Systems, Inc., a corporation, was not called upon to nor did purchase any materials for the purpose of completing said work.

X

That the expression contained in the contract of May 28, 1940, "to pit boxes" does and will not include the cost to plaintiff of the labor and material supplied by plaintiff "inside of pit boxes" other than that expressed in Item 4.

As a conclusion of law from the foregoing facts, the court finds: [31]

That United States for use of Andrew Pollia, plaintiff, do have and recover judgment in the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars (\$9,717.21) and costs from defendants Flotation Systems, Inc., a corporation and United States Fidelity and Guaranty Company, a corporation, provided that T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, do have and recover judgment in the sum of One Thousand Forty-eight and 73/100 Dollars (\$1048.73) and costs from defendants in intervention Andrew Pollia, Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, with the proviso that if Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, pay T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, then United States for the use of Andrew Pollia, plaintiff, do have and recover from Flotation Systems, Inc., a corporation, and United

States Fidelity and Guaranty Company, a corporation, the sum of Eight Thousand Six Hundred Sixty-eight and 48/100 Dollars (\$8,668.48) and costs, and it is ordered that judgment be entered accordingly.

Dated this 1st day of July, 1942.

FRANK H. NORCROSS,

District Judge.

[Endorsed]: Filed Jul 1 1942. [32]

In the Southern Division of the United States District Court of the Northern District of California.

Civil Action File Number 21905-W

UNITED STATES for use of ANDREW POLLIA,
Plaintiff,

vs.

FLOTATION SYSTEMS, INC., a corporation,
UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, FIRST
DOE COMPANY, a corporation, SECOND
DOE, THIRD DOE and FOURTH DOE,
Defendants.

T. G. SHANNON and B. W. MACKIE, co-partners,
doing business under the fictitious name
and style of SHANMAC CO.,
Plaintiffs in Intervention,

vs.

ANDREW POLLIA, FLOTATION SYSTEMS,
INC., a corporation, UNITED STATES FIDELITY
AND GUARANTY COMPANY, a corporation,
FIRST DOE COMPANY, a corporation, SECOND
DOE, THIRD DOE and FOURTH DOE,
Defendants in Intervention.

JUDGMENT

This cause came on regularly for trial on the 17th, 18th and 20th days of February, 1942, before the court without a jury, a jury trial having been duly waived by the parties and J. J. Doyle, Esq., appearing as attorney for United States for use of Andrew Pollia, plaintiff, and Andrew Pollia, Defendant in Intervention; John D. Harloe, Esq., appearing as attorney for Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, defendants, and defendants in Intervention; Torregano and Stark, Esqs., by Charles M. Stark, Esq., appearing as attorneys for T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in Intervention, and the court having heard the testi- [33] mony and having examined the proofs offered by the respective parties, and the court being fully advised in the premises and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith; now therefore, by reason of the law and Findings aforesaid,

It Is Hereby Adjudged, Ordered and Decreed:

That United States for use of Andrew Pollia, plaintiff have judgment in the sum of Nine Thousand Seven Hundred Seventeen and 21/100 Dollars (\$9,717.21) with interest thereon, at the rate of seven (7%) per cent per annum and costs of

suit against defendants Flotations Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation.

That T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, have judgment in the sum of One Thousand and Forty-eight and 73/100 Dollars (\$1,048.73), with interest thereon at the rate of seven (7%) per cent per annum and costs of suit against defendants in intervention, Andrew Pollia, Flotation Systems, Inc., a corporation, United States Fidelity and Guaranty Company, a corporation, with the proviso that if Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, pay T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., plaintiffs in intervention, then United States for the use of Andrew Pollia, plaintiff, have judgment in the sum of Eight Thousand and Six Hundred Sixty-eight and 48/100 Dollars (\$8,668.48) with interest thereon at the rate of seven (7%) per cent per annum, and costs of suit, against Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation.

Dated this 1st day of July, 1942.

FRANK H. NORCROSS,
District Judge.

Approved as to Form:

TORREGANO & STARK,

Attorneys for Plaintiff in In-
tervention.

Approved as to Form:

JOHN D. HARLOE,

Attorney for Defendants and
Defendants in Intervention.

[Endorsed]: Filed July 1, 1942. [34]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

Tuesday, February 17, 1942

Before: Hon. Frank H. Norcross, Judge.

Counsel Appearing:

For Plaintiff:

John J. Doyle, Esq.

For Defendant:

John D. Harloe, Esq.

For Intervenor:

Charles M. Stark, Esq.

Mr. Doyle: If it please the Court: The action this morning is one for money due as alleged in the complaint to an individual by the name of Andrew Pollia, for certain work that was [37*] performed at the Naval Air Station in Alameda, under a contract with the Flotation Systems, Inc., a corpora-

*Page numbering appearing at foot of page of original Reporter's Transcript.

tion. My name is John J. Doyle, and I represent Mr. Pollia.

The Flotation Systems, Inc., a corporation, denies that the money that is alleged to be due under the contract was due, and, incidentally, we claim that that amount at the present time, under the bill of particulars that was served, is \$9717.21. It is alleged that the balance was paid.

We expect to prove that the balance was due as a result not only of an original contract for some original work at the Naval Air Base, but also some extra orders that were issued subsequent to the issuance of the original contract. The Bonding Company defendant is here by reason of the fact that they executed a bond to the Government for the faithful performance of the job.

During the course of the contract, Mr. Pollia having a sub-contract with the Flotation Systems, Inc., a corporation, the corporation being the general contractor—during a part of the sub-contractor's work he was required to and did obtain the use of certain equipment for the purpose of excavation for purpose of installing equipment and pipe under his sub-contract with the general contractor. As a result of this litigation, certain issues arose; there was a bill that was left unpaid by the sub-contractor for the equipment for the excavation, and this brings us to the point that a petition was filed for leave to file a complaint in intervention, which is not opposed by the plaintiff nor the defendant, I believe. That complaint is also on file and at issue. In so far as the plaintiff is concerned, with

reference to the complaint in intervention, we have not filed any answer to the complaint in intervention.

Mr. John D. Harloe represents the Flotation Systems, Inc., a [38] corporation, and United States Fidelity and Guaranty Company, a corporation, and the firm of Messrs. Torregano & Stark represents the plaintiff in intervention.

I might state, your Honor, that the original contract that was entered into between Pollia, the subcontractor, and the Flotation Systems, Inc., a corporation, the general contractor, provided for certain work, and I do not think there is any dispute that the point in issue, the real point in issue, at least, was, I understand from the pleadings and various conversations with the defendants' attorney, is not an interpretation of the general contract, but an interpretation of Pollia's sub-contract with the Flotation Systems, Inc., a corporation. I do not think that there is any dispute about the extra work orders given. If there is, it will be raised, so far as I know, the first time this morning.

Briefly, the point is this, the contract which was executed and approved between Mr. Pollia and the Flotation Systems, Inc. provided that he was to do certain work up to but not including some gasoline storage pit fixtures which were being constructed at the Air Base at Alameda. I understand that the contention of the defendant corporation is that the interpretation of the contract is, notwithstanding the wording of the agreement between Mr. Pollia and the Flotation Systems, Inc., notwithstanding

the actual work done, that the contract should be interpreted that Mr. Pollia was to do all of the work. That means not only up to the pit, but included in the pit, for which they claim that there is no liability upon their contract, and there is no money due to Pollia because he was required to do all of the work.

Mr. Stark: On the basis of plaintiff's statement to your [39] Honor, and in so far as it relates to Pollia, we ask that the default of Mr. Pollia be entered as shown in the record, in so far as his obligation to us is concerned, leaving our defense limited to the answer filed by the Flotation Systems and the Bonding Company.

The Court: That order may be entered if there is no objection.

Mr. Harloe: Just a brief statement of the position of the defendant Flotation Systems, Inc. Flotation Systems, Inc. intends to prove to your Honor the following facts: That the contract was entered into by and between the Flotation Systems, Inc. and Andrew Pollia for the doing of certain work at the Naval Air Base, over in Alameda.

We intend to show that the contract was entered into by and between these parties by reason of the examination of the specifications and plans for the doing of this work by Andrew Pollia, and then upon the submission by him of a figure in a certain amount for the doing of that work.

The original contract between Andrew Pollia and the Flotation Systems was written by Mr. Pollia,

himself, in the form of a letter, and accepted by the Flotation Systems; that contract will be offered in evidence, in any event, and it provides for the sum of \$16,040. The contract says, "I propose to furnish the following labor and material, all in strict accordance with the Bureau of Yards and Docks Specifications 9505."

I want to answer Mr. Doyle's statement to your Honor as to the interpretation of this contract and explain to your Honor what we intend to prove and show, that there was no misunderstanding as to what the contract called for at the time it was entered into at the *prive* it was entered into. In other words, [40] if your Honor please, after Mr. Pollia had examined the plans and specifications for the doing of this work he submitted this figure to the Flotation Systems, Inc., and they accepted his bid, and thereafter he drew up this contract. In the interpretation of the contract, I want to call your Honor's attention to this. This work over there was the gasoline distribution system for the Naval Air Base. It consisted chiefly and practically of digging pits for the purpose of putting the pipes in; in other words, they are called pits; they are concrete pits in which gasoline tanks are placed, and then the pipe is fitted to the gasoline tank. It was all the work, we submit, to be done, under the contract. During the work in question a question arose with reference to union work; that will not come into the trial, that has nothing to do with the case. The point that arises is this, in the interpre-

tation of the contract that Pollia was the sub-contractor of the Flotation Systems, Inc. for the doing of this work. He examined the plans and specifications for the doing of this work, and gave a bid for the doing of it.

The first item of this contract, which Mr. Pollia, himself, drew, says, "Complete installation of all gasoline pipe as covered by plans accompanying specifications 9505." That is the first line of his contract. He says, "Complete installation of all gasoline pipe as covered by plans accompanying specifications 9505." Then the contract goes on and says, "including"—it does not say "excluding," but it says "including necessary excavation, back-fill, replacement of red rock, surfacing, repairs to any existing roads, welding, and testing all joints and all connections to pit boxes A (1), B (1), C-2 (2), D (8), and E (16). It is understood that Flotation Systems, Inc. will [41] furnish all necessary pipe and fittings,"—I want to call your Honor's specific attention to that wording, "all necessary pipe and fittings, and I will furnish all welding materials and equipment."

Now, that is the only clause necessary to be read to your Honor with respect to that. The Flotation Systems, Inc. feels that they are bound to pay Andrew Pollia for the work of installing all necessary pipe and fittings pursuant to the plans and specifications for the installation of the gasoline distribution system there at the base at Alameda.

We further intend to show this fact, that An-

drew Pollia commenced the work and proceeded up until the time when a change was made by the Government engineers in the installation of certain fittings inside of the pits; at that time he had installed approximately 80 per cent. of the fittings in the pits, and that thereupon a change order was given to Andrew Pollia for the installation of the changed fittings. Now, that was the first time that any question arose between Andrew Pollia and the Flotation Systems as to the interpretation of the contract, and as to what work Andrew Pollia was to do under and pursuant to his contract. Thereupon the question arose as to what was meant by the clause, "welding and testing all joints and all connections to pit boxes."

Now, for a complete understanding of that your Honor must know that all joints of pipes which were brought up to the pit were laid in the ground at a depth of five or six feet—I don't know just exactly the depth; but a trench had to be dug, the pipe laid into the trench, and then filled by the back-fill over the trench, and the surface leveled. Prior to the doing of that these joints and pipes had to be tested by the engineers [42] in charge of the doing of the work in order to ascertain, as a matter of fact, whether they were properly placed in the ground, or not. The clause of the contract says, "welding and testing all joints and all connections to pit boxes." Your Honor will understand that the pit boxes were open concrete pits, large concrete pits. A pit is a hole in the ground

and the concrete is poured in. In the building of these pits a tank was placed in the pit, and connections from the tanks were made in the open pits to the tanks.

Now, as I say, we will show to your Honor that Andrew Pollia, our sub-contractor, completed approximately 80 per cent. of the installation of the fittings inside of the pits before any question arose between them as to whether he was or was not to do that work under his contract, and the reason that was raised was because of the fact that in ordering changes it was necessary for him to demand a change order, which he was perfectly right in demanding; in other words, it was extra work for which he was entitled to extra compensation for the work he was required to do.

A bill of particulars was demanded, and the bill of particulars sets forth certain items of charges by Andrew Pollia, which we deny, some in toto, some in part, which will be brought up by the testimony with reference to those items.

Now, the answer also sets forth this fact, the answer of Flotation Systems, Inc., and I take it that the claim of the intervenor Shanmac Co. is in practically the same situation as some of the others. It is set forth that in the doing of this work by Andrew Pollia he sub-contracted our purchase material from suppliers, which people whom he purchased from have not been paid, and they gave notification to the Flotation Systems, Inc. [43] of that fact, demanding their payment from them. Those

as to whom there was no question as to the amount due the Flotation Systems, Inc. paid, and they are set forth in an Exhibit C attached to the answer. There are five of them. They are Reed Co., in the sum of \$487.52; Western Crane Co., \$44.15; Thomas Welding Co., \$182.50; E. K. Wood Lumber Company, \$4.82; and J. Catucci, \$746.59. Those were bills which Mr. Pollia had incurred, and upon proper notification from them they were paid by Flotation Systems, Inc., and any judgment that might be obtained by Mr. Pollia, they would be a proper set-off.

That, in brief, is our defense to this action, and we think that Mr. Pollia, after the Flotation Systems has paid these amounts, amounting to \$1365.58, has been overpaid instead of underpaid.

Mr. Doyle: I will call Mr. Pollia.

ANDREW A. POLLIA,

Called for the Plaintiff; Sworn.

Mr. Doyle: Q. What is your name, please?

A. Andrew A. Pollia.

Q. Your residence?

A. 695 22nd Avenue, San Francisco.

Q. Your occupation?

A. Mechanical engineer and contractor.

Q. In April or May of 1940 were you engaged in the same line of activity at the Naval Air Station at Alameda?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. When you originally went there, did you go there to do the so-called Flotation job, or were you there on some work before that?

A. I was installing mechanical service for the boathouse at the Naval base.

Q. That had nothing to do with this job?

A. No.

Q. While you were doing this job in the boat-house, did you meet [44] a man by the name of Mr. Ceriat? A. Yes.

Q. Did you know who Mr. Ceriat was at that time? A. No, I did not.

Q. Did he approach you? A. Yes.

Q. Did he inform you who he was?

A. Yes.

Q. What did he tell you?

A. He told me that he was superintendent of construction for the Flotation System, contractors for installing the gas fuel system.

Q. Did you have any further conversation at that time?

A. They were seeking at that time to install a temporary water line and he asked me if I would be interested in submitting a price of furnishing some temporary water line, because it was to run a considerable distance from the job I was working on.

Q. What happened?

A. During the conversation he asked me if I would be interested in submitting a bid for instal-

(Testimony of Andrew A. Pollia.)

ling pipe lines relative to this gasoline storage system.

Q. When he asked you about that, was that the matter that subsequently resulted in this litigation?

A. Yes.

Q. When you were approached on that subject about submitting a bid what did you say?

A. I said I would like to submit my bid.

Q. Did you submit a bid? A. Yes.

Q. Now, at the time, did you draw up or submit an estimate to Mr. Ceriat? A. Yes.

Q. I show you a document which is dated May 27, 1940, and ask you what that is.

A. This is the proposal submitted by me to Mr. Ceriat, outlining the work that I intended to do.

Mr. Doyle: I ask that this be introduced as Plaintiff's Exhibit first in order.

Mr. Harloe: I do not want to object, but I am going to [45] object to this because this is a preliminary negotiation that was included in the executed contract.

The Court: For the present it may be marked for identification.

(The letter of May 27, 1940, from Pollia to Flotation Systems, Inc. was marked "Plaintiff's Exhibit 1 for Identification.")

Mr. Doyle: Q. Now Mr. Pollia, you submitted this letter, there, of May 27, 1940 to whom?

A. To Mr. Ceriat.

Q. Was there a discussion about it?

(Testimony of Andrew A. Pollia.)

A. Yes, there was.

Q. How many people participated in the discussion eventually?

A. Mr. Ceriat and Mr. Snyder.

Q. Will you please identify Mr. Snyder?

A. Mr. Snyder is the gentleman down there.

Q. Was he on the job at that time?

A. Yes.

Q. In what capacity was he on the job in so far as you know?

A. Well, a sort of general clerk in the office.

Q. Did Mr. Snyder, Mr. Ceriat and yourself have discussion about your proposed agreement of May 27, 1940, Plaintiff's Exhibit 1 For Identification?

A. There was some discussion as to the terms and then Mr. Snyder agreed to draw up a contract on my stationery.

Q. Did Mr. Snyder draw up a contract on your stationery? A. Yes.

Q. When you say Mr. Snyder drew up the contract, what do you mean by that?

A. He typed the contract.

Q. I will show you a document on your letter-head, Andrew A. Pollia, dated May 28, 1940, and ask you to testify to what that document is.

A. This is the document covering the work that I was supposed to do, under the contract.

Q. After Mr. Snyder read through your letter of May 27, this document was prepared?

(Testimony of Andrew A. Pollia.)

A. That is right. [46]

Q. Whose signature is that?

A. That is my signature.

Q. Andrew A. Pollia? A. Yes.

Q. And on the left-hand corner, "Accepted by" whom? A. Mr. Ceriat.

Q. And the date? A. 5/28/40.

Q. And this pen and ink "O. K. James Q. Henry"—when you submitted this agreement of May 28th and it was accepted by Mr. Eugene Ceriat, was Mr. James Q. Henry there?

A. No, he was not.

Mr. Doyle: I ask that this agreement of May 28, 1940 be introduced in evidence as Plaintiff's Exhibit first in order.

Mr. Harloe: No objection.

The Court: It may be admitted.

(The document was marked "Plaintiff's Exhibit 2.")

Mr. Doyle: Q. After Mr. Ceriat signed this document what did you do with it, in so far as Mr. Henry was concerned?

A. I understood that the document had to go to Los Angeles, to be signed by Mr. Henry, and I proceeded to go to work when it was accepted by Mr. Ceriat.

Q. Then you left that document with Mr. Ceriat?

A. Yes.

Q. At a subsequent date, the document was returned to you? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. It was returned to you from Los Angeles, or from Alameda to you?

A. Well, from Mr. Ceriat to me.

Q. When you left the document, when you say it had to go to Los Angeles, what do you mean by that? A. To be signed by Mr. Henry.

Q. Did you know what capacity Mr. Henry occupied in the Flotation Systems, Inc.?

A. He was president.

Q. And it was your understanding that this document was sent to [47] him? A. Yes.

Q. Now, Item 1 of this agreement says, "Complete installation of all gasoline pipe line as covered by plans accompanying specifications 9505, including necessary excavation, back-fill, replacement of red rock surfacing, repairs to any existing roads, welding and testing all joints and all connections to pit boxes," which are specified. Did you proceed to do that work prior to the time that the document was returned to you from Mr. Henry at Los Angeles, through Mr. Ceriat?

A. Yes, I proceeded immediately after Mr. Ceriat accepted it.

Q. The agreement of May 28, 1940 refers to specifications 9505. Did you see the original plans and specifications?

A. I saw the original plans and specifications, yes.

Q. How long after you had started the work was it that there was any question about any work

(Testimony of Andrew A. Pollia.)

or any question about the work that you were doing?

A. It was the second month that a question arose.

Q. All right, what happened in the second month?

A. We were arriving with some lines to the pit and we were required to do some additional welding on connections inside of the pit on some eight-inch lines, and they issued an order to me to weld eight-inch connections.

Q. What were the circumstances resulting in issuing this or any extra work order relative to work in the pits?

A. They required these extra welding connections inside the pit in order to meet with some connections or some work being installed by the Aqua Systems.

Q. Who are they?

A. They are the people who furnished the actual control of this distribution of gasoline.

Q. Did they also furnish the actual equipment in the pit? [48]

A. They furnished the equipment inside of the pit, especially equipment connecting with connections on top of the tank, which were inside of the tank.

Q. Was there any discussion at any time about the fact that the material and equipment inside of the pit was extra or special equipment?

(Testimony of Andrew A. Pollia.)

A. Yes. Mr. Snyder told me that the work inside of the pit was extra equipment.

Q. Was there any discussion about you doing any of the Aqua Company's work? A. No.

Q. Nothing ever said about that? A. No.

Q. Did either one of these extra work orders bring us to the point where I interrupted you for a moment, about getting an extra work order for the connection of the equipment inside of the pit?

A. The extra work order that was issued and approved and paid for would show on the July statement that I rendered to the Flotation Systems.

Mr. Doyle: Have you that statement, Mr. Harloe?

Mr. Harloe: You mean a statement submitted by Mr. Pollia?

A. In July, that would have been due in August.

Mr. Harloe: We have no statement of July, Mr. Pollia.

Mr. Doyle: Q. You submitted a statement about when with respect to the testimony that you have just given? A. At the end of July.

Q. What did that statement consist of?

A. Work that had been done during the month of July, along with some extra work that had also been done.

Q. During the time that you were on the job, did you receive extra work orders? A. Yes.

Q. So that there will be no question about it, irrespective of any legal interpretation of any extra

(Testimony of Andrew A. Pollia.)

work orders that you re- [49] ceived, it was your understanding that they should not be included in the original contract of May 28th, but as a matter of fact separate and distinct, and entirely different work? A. Yes.

Mr. Harloe: Just a minute, I will object to the form of that question, his understanding. The work orders speak for themselves.

The Court: The written instruments undoubtedly speak for themselves. We will consider that question later.

Mr. Doyle: Q. I show you a document and ask you what that is. What is that document?

A. That is an extra work order.

Q. That is dated when? A. July 31.

Q. What is the number of that extra work order? A. 273.

Q. There is a signature down in the lower right-hand corner; whose signature is that?

A. F. E. Kalte.

Q. Do you know who Mr. Kalte is?

A. Well, yes, he is the gentleman on the right, there.

Q. What occupation or what status did he have with the Flotation Systems, Inc.?

A. I believe he was vice-president and secretary, I don't know.

Mr. Harloe: Q. What was the number of that?

A. 273.

Mr. Doyle: Dated July 31, 1940.

(Testimony of Andrew A. Pollia.)

Q. What were the circumstances of your getting this work order, No. 273, on July 31, 1940?

A. This work order, here, covered certain work inside of the pit.

Q. Work inside of the pit? A. Yes.

Q. What were the circumstances of that?

A. Well, Mr. Kalte asked me to give him a price for the installation of this work inside of these ten pits.

Q. Had there been any question up to July 31 about your original contract of May 28, 1940 for doing work inside of the pits? [50]

A. There was not.

Q. Upon receipt of that extra work order from Mr. Kalte, did you commence to do work inside of the pit?

A. Mr. Kalte asked me for a price on the work inside of these ten pits.

Q. Did you give him a price?

A. I figured up a price and he went out and came back a little while later and said he thought it was a little high, but he issued the order.

Q. When you got that order did you proceed to do the work?

A. We did not proceed with the work on these various pits right away, because they did not have the equipment.

Q. I realize that, but eventually you commenced to and actually did the work covered by that order?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. And the amount of that extra work order is what sum? A. Ten pits at \$77 a pit.

Mr. Doyle: We ask that this be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted.

(The Extra Work Order of July 31, 1940 was marked "Plaintiff's Exhibit 3.")

Mr. Doyle: Q. I show you another form, in order to save time, of Flotation Systems, Inc., No. 274. The signature down in the lower right hand corner of that form is whose?

A. Mr. Kalte's.

Q. What were the circumstances of the issuance of that extra work order?

A. That was similar to No. 273.

Q. Covering the same situation?

A. Covering the same situation, only in this case we had stayed on the job as long as we could and they still did not have the equipment to finish this, so we had completed all the work on 273 and all the work covered by the contract, and covered by the extra work orders, and then we notified Mr. Snyder whenever he got this equipment we would come [51] back and complete this extra work order.

Q. Did the equipment eventually come?

A. It eventually came, but we were never notified to come over and complete it.

Mr. Doyle: There is a second work order 274 dated July 31, 1940; the price to be paid for this

(Testimony of Andrew A. Pollia.)

service is \$77 per pit. I ask that that be introduced as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(The work order of July 31, 1940, No. 274, is marked "Plaintiff's Exhibit 4.")

Mr. Doyle: Q. During the time you did the extra work under work orders 273 and 274, from where did you receive the equipment you were using? A. From the Flotation Systems.

Q. Your contract of May 28, 1940, was for labor and installation? A. Yes.

Q. Not equipment? A. Not equipment.

Q. And you waited upon delivery from Flotation of the material to do the work as provided by the contract of May 28, 1940 in orders 273 and 274?

A. Yes.

Q. I will show you, in the interest of time, an extra work order No. 280, dated August 3, 1940, with a signature in the lower right-hand corner. Whose signature is that? A. E. Ceriat.

Q. He is the gentleman you have heretofore referred to? A. Yes.

Q. What were the circumstances of the issuance of that extra work order?

A. They wanted to install an extra 165 feet of 6-inch cast iron water main.

Q. You were subsequently given an extra work order for that? A. Yes.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order. [52]

(Testimony of Andrew A. Pollia.)

The Court: It may be admitted and marked.

(Extra work order of August 3, 1940, No. 280, was marked "Plaintiff's Exhibit 5.")

Mr. Doyle: Q. I will show you another extra work order No. 1207, dated August 26, 1940; whose signature is that in the lower right-hand corner?

A. That is Mr. Snyder's.

Q. What were the circumstances of the issuance of that extra work order?

A. They ordered more labor to install some branch lines, and I furnished them with labor for them.

Q. That price was how much?

A. \$208.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(Extra work order No. 1207 of August 26, 1940 was marked "Plaintiff's Exhibit 6.")

Mr. Doyle: Q. I will show you another extra work order No. 1215, dated August 29, 1940. Whose signature is that in the lower right-hand corner?

A. Mr. Snyder's.

Q. What were the circumstances with respect to the issuance of that extra work order?

A. The Inspection Division of the Navy Department at Alameda insisted that they clamp these pipe lines, and Mr. Snyder issued an order for me to place those clamps on the pipe line connecting to the pits in various places.

(Testimony of Andrew A. Pollia.)

Q. Pursuant to that extra work order did you do the work? A. Yes.

Mr. Doyle: I ask that that be introduced into evidence as Plaintiff's next in order.

The Court: It may be admitted and marked.

(The work order dated August 29, 1940, No. 1215, was marked "Plaintiff's Exhibit 7.")

[53]

Mr. Doyle: Q. I show you extra work order No. 1431 from the Flotation Systems, Inc. Whose signature is that in the lower right-hand corner of the word order?

A. I can't make that out very good, it looks like Mr. Taylor.

Q. Was there a Mr. Taylor connected with the Flotation Systems, Inc.? A. Yes, there was.

Q. Do you know what Mr. Taylor's official connection or capacity was? A. No, I do not.

Q. This document of the Flotation Systems, Inc. numbered 1431, signed by some initials and the last name Taylor, was issued to you for what purpose? A. I don't know.

Q. It states, "To cover field pipe work as per contract of May 28, 1940." A. Yes.

Q. \$16,040. A. Yes.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(Extra work order dated 7/1/40, No. 1431, was marked "Plaintiff's Exhibit 8.")

(Testimony of Andrew A. Pollia.)

Mr. Doyle: Q. On the letter of May 28, 1940, in which you quoted a price on the work and these extra work orders, you proceeded to do the work as provided by those contracts, did you?

A. Yes.

Q. I will show you another document which is dated August 7, 1940, on the letterhead of Flotation Systems, Inc., signed by Eugene Ceriat, Construction Superintendent, and ask you what that is.

A. This relates to wherever we made a weld and it left a joint that was unprotected, we were to protect this fitting, or joint, or whatever the case might be, with an approved wrapping that was specified by the Navy, and this covered the work set forth [54] in here.

Q. Did you proceed to do the work specified in this letter of August 7, 1940? A. Yes.

Mr. Doyle: I ask that that be introduced in evidence as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(The letter of August 7, 1940, was marked "Plaintiff's Exhibit 9.")

Mr. Doyle: Q. After you had been doing work for some time did a question come up about some money being paid?

A. That was on the last demand that I sent a statement in for, on which I only received a portion of the money, when the question of money arose.

Q. Now, at that time did Mr. Kalte, as far as you know, come up from Los Angeles and see you on the job? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. What conversation did you have on the job with Mr. Kalte relating to work and/or money?

A. At the time that I talked to Mr. Kalte, it was in August, the latter part of August.

Q. Of what year? A. 1940.

Q. Go ahead.

A. We had done a lot of work inside of the pits based on a unit price.

Q. What do you mean by work inside of the pits at a unit price?

A. Well, that was work that came up inside of the pits, and Mr. Snyder submitted a unit price list to me, which was so much a joint, and so much a fitting inside of the pits.

Q. When Mr. Snyder submitted that to you was there any question raised at that time by anybody that the work that you were then to do inside of the pits was work covered by the original contract of May 28, 1940, and their contract order of July 1, 1940, 1431? A. No. [55]

Q. There was not? A. Yes.

Q. Now, then, this work that you were doing, the unit price job, what discussion was there about that matter?

A. The only discussion I had with Mr. Kalte in the latter part of August, 1940, was I told him that a considerable amount of this work had been done.

Q. A considerable amount of what work, inside of the pits?

A. No, this extra unit price order.

(Testimony of Andrew A. Pollia.)

Q. Go ahead.

A. Mr. Kalte told me that before I came down with the bill, or before I sent the bill to the Flotation Systems, to have Mr. Snyder itemize the amount of work, and that was done.

Q. Anything else said between you and Mr. Kalte? A. No.

Q. Did you go in and see Mr. Snyder in conformance to Mr. Kalte's suggestion?

A. I made an appointment with Mr. Snyder one evening at the office of the Flotation Systems at the Alameda Naval Air Base.

Q. Who was there that evening at the office of the Flotation Systems at the Alameda Air Base?

A. Mr. and Mrs. Snyder.

Q. And yourself? A. And myself.

Q. Did Mr. Snyder prepare some kind of an advice or something to the Los Angeles office of the Flotation Systems about this matter?

A. He prepared an itemized list of the work that I had completed inside of the pits.

Q. You were there that evening while he prepared it? A. Yes.

Q. After he prepared it did he deliver it to you?

A. Yes.

Q. Was there any question then about any work about the pit, or inside the pit, or any ambiguity or any doubt expressed between either one of you?

A. No.

Q. You got a letter from Mr. Snyder, did you?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. You proceeded to Los Angeles?

A. Yes. [56]

Q. When you got to Los Angeles where did you go, I mean the following morning, not that night.

A. I went out to the office of the Flotation Systems.

Q. When you got out to the office of the Flotation Systems, the next morning, whom did you see out there? A. Mr. Kalte.

Q. Did you have a conversation with Mr. Kalte at that time and place? A. Yes.

Q. Who was present?

A. Well, I presented the bill, a statement itemized that Mr. Snyder had delivered, along with the bill. Mr. Kalte looked at it and said, "Well, I want to have a talk with Mr. Henry," and he said, "I think you ought to join us, too," and we went in and discussed it.

Q. When you say you went in and discussed it, where did you go—into Mr. Henry's office?

A. Yes, into Mr. Henry's office.

Q. Who was there?

A. Mr. Kalte, Mr. Henry and myself. A few minutes after we were inside of the office Mr. Kalte went out and called in Mr. Ceriat.

Q. There was Mr. Henry, Mr. Kalte, and Mr. Ceriat, of the Flotation Systems, and yourself, is that right? A. Yes.

Q. Just relate the conversation that occurred at that time and place.

(Testimony of Andrew A. Pollia.)

A. Well, Mr. Kalte raised the question with Mr. Henry that he was under the impression that the work inside of the pits was included in the bid.

Q. What did you tell him?

A. I told him it was not included in the contract, I said not according to the contract I have. And Mr. Henry made the statement that he did not think he even signed the contract between me and the Flotation Systems which I had in my pocket.

Q. You are talking about the letter of May 28, 1940?

A. It was O. K.'d by James Q. Henry. I said, "I have the con- [57] tract in my pocket with your name on it, Mr. Henry."

Q. What did you do?

A. Then I showed it to him.

Q. That was Plaintiff's Exhibit No. 2, is that right?

A. Yes.

Q. When you showed that to Mr. Henry what was the conversation about at that time?

A. When I showed him this contract, he said, "Well, I guess that is my signature, I signed the contract, all right."

Q. Was there any discussion at that time and place about the work being up to the pit?

A. After they read the contract over, Mr. Henry and Mr. Kalte, they were discussing it in my presence, and finally Mr. Kalte said, "I guess you are the only business man here, and we have to pay you."

Q. What happened then?

(Testimony of Andrew A. Pollia.)

A. We came out to the outer office.

Q. Who are "we"?

A. Myself and Mr. Kalte, and I asked Mr. Kalte if I could get the amount of the demand, which was in the neighborhood of \$5000.

Q. What did he tell you?

A. He said he would see what he could do, he called out another gentleman from another office, I believe the cashier, and he talked to him a few minutes, and then came back and advanced me a check of \$1000 on account.

Q. What did he tell you then?

A. I said, "Can I get the rest tomorrow?" And he said, "I will see what I can do," so I said, "Shall I come out tomorrow?" And he said, "Yes," so I went out the next morning.

Q. You left the office, then, did you?

A. Yes.

Q. And the following morning you went back to the Flotation Systems office?

A. That is right.

Q. What happened then? Whom did you see then when you went back? A. Mr. Kalte.

Q. What did you ask him?

A. I asked him if he had done anything [58] about the balance, and he said "No." I asked him if he would care to issue a note, I would discount that note, and I could pay some of the bills, and he said they did not want to do that, I should not worry about it, but he would have the money the

(Testimony of Andrew A. Pollia.)

next trip that he was up at Alameda, in a week or so.

The Court: We will take a recess now for ten minutes.

(After recess:)

The Court: You may proceed.

Mr. Doyle: Q. We left off with when you talked about discounting the note from the Flotation Systems to get money to pay bills.

A. Mr. Kalte said they did not want to do that, for me not to worry, he would bring the money up in a week or so, I would have my demand.

Q. What did you do then?

A. I came back to San Francisco, and went back on the job. I had men working on the job all the time, anyway.

Q. You, personally, then went back on the job?

A. Yes.

Q. Did you see Mr. Kalte on the job at a later date? A. No.

Q. What took place then? Did some question arise about the payment of the balance of the money that was due you?

A. Mr. Taylor came up to Alameda.

Q. About how long a period of time elapsed after you left Los Angeles until Mr. Taylor appeared at Alameda?

A. I believe it was between four and five days.

Q. What happened when Mr. Taylor came up?

A. I asked Mr. Taylor if he brought the check up, and he said "No," he said he was busy, he had

(Testimony of Andrew A. Pollia.)

to go over to San Francisco, and when he came back he would talk about it.

Q. Did Mr. Taylor leave? A. Yes.

Q. Did he come back and see you at the Alameda Air Base? A. Yes. [59]

Q. Was that the same day?

A. The same day.

Q. When Mr. Taylor came back and saw you later on the same day, what conversation did you have then about this money?

A. He said he had taken the matter up with their attorney, and that they felt that the work that I was claiming in my demand was included in the contract, and that they were not going to pay it, if I wanted to I could go over and see their attorney.

Q. What happened then?

A. I proceeded to work and went over and saw the Commander about it.

Q. You mean the United States Naval Commander? A. Yes.

Q. What was his name? A. Siebert.

Q. Was Mr. Taylor there when you saw Commander Siebert? A. No.

Q. What happened then, so far as Mr. Taylor, or your money, or your work was concerned?

A. I don't know who it was, but somebody arranged a meeting with the Commander afterward.

Q. Did you go to that meeting? A. Yes.

Q. Who was present?

A. Mr. Snyder, Mr. Brazier—

(Testimony of Andrew A. Pollia.)

Q. Who was Mr. Brazier?

A. He was a sort of a superintendent on the job for the Flotation Systems.

Q. Go ahead.

A. And Mr. Long, who was an inspector in the Naval District.

Q. And Mr. Taylor?

A. Mr. Taylor was not there, no.

Q. Mr. Taylor was not at the conversation, is that the idea? A. Yes.

Q. After you had this conversation what happened then?

A. Well, I felt that as long as I was not paid, I didn't want to do any more work.

Mr. Harloe: Just a minute. We move to strike out the answer as to what he felt.

The Court: What he felt may go out. [60]

Mr. Doyle: You cannot testify as to what your feelings were, or what happend. I am not trying to lead you, but you went back on the job, and you had a conversation, and irrespective of what happened at that conversation, what did you next do? What next developed about the work, or the payment of the money, in so far as direct contact with any of the Flotation Systems officials was concerned, or any of their members, or your attorney?

A. Well, the question arose as to the completion of the work. The work had to be completed. The Commander asked me if I was willing to give the Flotation a release so that they could complete the work, and it was agreed that the Flotation Systems

(Testimony of Andrew A. Pollia.)

was to draw up a satisfactory character of a release whereby I would release them and let them complete the work.

Q. Did you receive, ultimately, some kind of an agreement from the Flotation Systems, which, as far as you know, was prepared on behalf of the Flotation Systems, whereby you released the Flotation Systems? A. Yes.

Q. Do you know where that agreement came from? A. No, I do not.

Q. When you got the agreement, what did you do? A. I turned it over to my attorney.

Q. First of all, were you satisfied with the agreement—not the legal import of the agreement?

A. No, I was not.

Q. You turned it over to your attorney?

A. Yes.

Q. Who was he?

A. Mr. Theodore Tamba.

Q. Do not tell us what the conversation was with Mr. Tamba. What did Mr. Tamba do?

A. Mr. Tamba drew up an agreement.

Q. A counter-agreement, is that it?

A. Yes.

Q. What did you do with the counter-agreement, so-called?

A. I turned it over to Mr. Snyder.

Q. Where—at the office?

A. At the office, yes. [61]

Q. What happened to the counter-agreement?

(Testimony of Andrew A. Pollia.)

A. They did not accept that.

Q. By "they," whom do you mean?

A. Mr. Snyder said that the Flotation people would not accept it.

Q. What happened then?

A. I went back and reported to the Commander that we could not come to any agreement, and that I would proceed and complete the work.

Q. Did you proceed and complete the work?

A. Yes.

Q. You still have not been paid the money that was due you? A. That is right.

Q. What did you do then?

A. I completed all the work covered by the extra work orders and covered by the contract.

Q. When was the first time that you were informed by anybody on behalf of the Flotation Systems that the work as provided in Plaintiff's Exhibit 2, which was your letter to them on May 28, 1940 and their work order No. 1413, of July 1, 1941, which is confirming your letter to them—when was the first time that you heard from the Flotation Systems or anybody acting on their behalf that the work that you were to do was the work in the pits?

A. Not until after I presented the statement in the first part of September that covered the extra work orders.

Q. After you presented the statement in the first part of September they said they would send you up the money? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. And Mr. Henry said he did not know he signed the contract? A. Yes.

Mr. Doyle: Mr. Harloe, would you please look through your file again for a statement which was sent by the witness to the Flotation Systems, dated August 29, 1940?

Mr. Harloe: I have that.

Mr. Doyle: Q. I will show you a letter on your stationery, [62] which is dated August 29, 1940. Do you recall that document? A. Yes.

Q. Before the recess there was a question about your getting some money, or about getting some extra work in the pits. Does that statement contain any charges for work in the pits on any extra work order?

Mr. Harloe: Just a minute. I have no objection to your leading the witness for the purpose of expedition, as I think we can get along much quicker, but I do object to your asking the witness what appears in the statement. The statement speaks for itself.

Mr. Doyle: All right. Mr. Harloe, have you the checks that constitute payment No. 2 in the sum of \$4737.49?

Mr. Harloe: No, I have not got the checks. I have photostatic copies of them. Maybe the witness can identify the photostatic copies.

Mr. Doyle: Perhaps I can straighten it out. On this statement which you have in your hand there is an item there of \$4737.49. Do you see that item?

(Testimony of Andrew A. Pollia.)

A. Yes.

Q. Was that an item of one payment, or were there various payments making that total?

A. This payment No. 2 consisted of a portion of the work under the contract, and extra work and rent of equipment.

The Court: That is not in answer to the question that was asked.

Mr. Doyle: Q. There were various checks issued for various work totaling \$4737.49?

A. That is right.

Q. And the various checks that were issued totaling \$4737.49 were for what? Was that for, as far as you know, work under the original contract, or for work covered by the extra work [63] orders that you received?

A. Well, it covered a little for extra work orders, and I had excavation equipment on the job that was working for me, which I, in turn, rented to them, plus work on the original contract.

Q. In other words, the \$4737.49 covered obligations for work under the original contract, and also for work under the extra work orders, is that right?

A. Yes.

Q. And the work that was under the extra work orders, what did that cover?

A. That covered 32 wells on 6-inch pipe, 32 wells on 8-inch pipe inside of the pits.

Q. Inside of the pits? A. Yes.

Q. Extra welding of extra joints inside of the pits? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Was there any other question about the extra work that you did inside of the pits by welding the extra joints? A. No.

Q. You submitted a bill, and as a matter of fact you got paid for the extra work inside of the pits, did you? A. Yes.

Q. I will show you a letter from Flotation Systems, Inc., dated August 23, 1940, signed by Flotation Systems, Inc., by Arthur T. Snyder, Engineer, and addressed to you, and ask you to explain the circumstances of the issuance of that letter.

A. This letter was issued to cover extra work inside of the pits on a unit price basis.

Q. You testified to that before this morning's recess, about the unit price basis. Will you please explain that letter with reference to the unit price on extra work inside of the pit?

A. Certain work inside of the pit was being done by the Aqua Systems, and then it required bolting up the valves where the Aqua Systems terminated their work.

Q. Can you explain that a little bit more?

A. In other words, in each one of these pits there were two special valves manufactur- [64] ed by the Aqua Systems, which bolted onto the ends of the pipe in the tanks, and then from there some regular standard equipment, such as check valves, and elbows, flanged elbows, and they issued an order based on unit prices, bolting up 4-inch flange joints \$2.50 apiece.

Q. As a result of special equipment of Aqua

(Testimony of Andrew A. Pollia.)

Systems, in order to connect it up you got that letter to do that work inside of the pit, and you did that?

A. Yes, covering that work inside of the pit.

Q. You did that under the extra work order?

A. Yes.

Mr. Doyle: I will ask that this letter be introduced in evidence next in order.

(The letter from Flotation Systems to Pollia dated August 23, 1940, was marked "Plaintiff's Exhibit 10.")

Mr. Doyle: I will ask that the letter of August 29, 1940 relative to the \$4737.49 be introduced in evidence as Plaintiff's Exhibit next in order, also.

The Court: It may be admitted in evidence.

(The letter of August 29, 1940, from Pollia to Flotation Systems, was marked "Plaintiff's Exhibit 11.")

Mr. Doyle: Q. Mr. Pollia, pursuant to the bill of particulars that was delivered in response to the Defendants' demand the total bill was \$26,908.70.

A. Yes.

Q. You received certain payments in the sum of \$17,181.49, and under the original contract and extra work orders there is a balance due of \$9,727.21?

A. Yes.

Mr. Doyle: Take the witness.

Cross-Examination

Mr. Harloe: Q. Mr. Pollia, when did you first look at the plans and specifications for the doing of this work? [65]

(Testimony of Andrew A. Pollia.)

A. When I was preparing the bid.

Q. When you were preparing the bid?

A. Yes.

Q. You went over the plans and specifications—just look at these, will you, please, Mr. Pollia? Those were the specifications?

A. Those were the specifications.

Q. Will you identify those plans, if you will, as the plans that you examined for the doing of that work?

A. Those were the plans I checked.

Q. Did you also check up this one?

A. I just looked at this one.

The Court: You had better identify them.

Mr. Harloe: I will identify them. The first plan, No. 1210-43-4, had nothing to do with your work, did it? A. No.

Q. That had nothing to do with your work?

A. No.

Q. We will take that out. Plan 1210-43-3 is the plan for the pits, is it not? A. Yes.

Q. And plan 1210-43-5 is the outside piping?

A. Outside piping, yes.

Q. The piping of the tanks. This plan, here, 1210-43-3 shows certain fittings in the pits, doesn't it? A. It shows all special fittings in the pit.

Q. They show all of the fittings?

A. They show the different equipment in the pit.

Q. Special equipment to be placed in the pit?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. When you were asked to figure on this work you were asked to figure on the work of installing all of the pipe, weren't you?

A. I was asked to submit a bid to do all of the field piping.

Q. All of the pipe installation, all of the fittings? A. No.

Q. You say you were only asked to submit a bid for the field piping? A. Field piping.

Q. The plans for the pits and the plans for the field piping were [66] together, were they not?

A. I saw the plan for the field piping only—I saw the plan for the pit piping, but I was informed that was special equipment.

Q. You say you were informed it was special equipment? A. Yes.

Q. Isn't there a lot of standard equipment shown in there?

A. These are all valves made by the Aqua people, in every one of these pits.

Q. Answer my question, isn't there a lot of standard pipe equipment shown on these plans?

A. Inside of the pit?

Q. Yes. A. No, there is not.

Q. None, at all? A. No, there is not.

Q. There is no standard equipment shown in there at all?

Mr. Harloe: I will offer these plans and specifications in evidence as Defendants' Exhibit.

Mr. Doyle: Mr. Harloe, I do not believe he answered the last question.

(Testimony of Andrew A. Pollia.)

Mr. Harloe: I asked him if there was any standard equipment.

Mr. Doyle: You asked a question after that.

A. No, there is no standard equipment.

(The plans were marked "Defendants' Exhibit A.")

Mr. Harloe. Q. Mr. Pollia, you were on the location there prior to the submitting of the bid for the doing of this work? A. Yes.

Q. Whom did you first speak to relative to the doing of this work? A. Mr. Ceriat.

Q. You saw Mr. Ceriat? A. Yes.

Q. Did you and Mr. Ceriat examine the plans together at all? A. Yes.

Q. You did? A. Yes.

Q. That work that you did there, Mr. Pollia, would come under [67] the head of plumbing or pipe fitting—which one would it come under the head of?

A. It comes under the head of pipe fitting.

Q. It comes under the head of pipe fitting, all of the work there, that is relative to the pipes?

A. That had reference to the pipes.

Q. Let me ask this question: During all of the time you were there did you ever see any other pipe fitter, contract pipe fitter there besides yourself and the men employed by you? A. Yes.

Q. Who?

A. There was a Mr. Johnson, who was employed by the Aqua people as a pipe fitter.

(Testimony of Andrew A. Pollia.)

Q. That was Mr. Johnson. Did he do any work there? A. Yes.

Q. Did he do any work while you were there?

A. Yes.

Q. What work did he do?

A. He installed these special valves in these pits.

Q. These were where?

A. They are marked on the plan.

Q. They are special valves—they are a special article of the Aqua people, themselves, are they not?

A. Yes, I believe they are, I don't know, personally.

Q. In other words, they are special valves that are shown on these plans and specifications and they are the valves that the Aqua people put in?

A. Yes.

Q. Do you know who Mr. Johnson was working for, I mean what company he was connected with?

A. I understood he was working for the Aqua people.

Q. You understood he was working for the Aqua people? A. Yes.

Q. Mr. Pollia, in your contract, Exhibit No. 2 in evidence, the third paragraph calls for "Complete installation of a 12-inch terra cotta drain pipe."

A. Yes.

Q. You remember that, do you?

A. Yes. [68]

Q. That was changed, was it, Mr. Pollia?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. It was entirely omitted? A. Yes.

Q. And what was the amount decided on that you allowed for the omission of that article?

A. I believe it was \$2300.

Q. \$2300 for the omission of the terra cotta drain pipe? A. Yes.

Q. When you answered Mr. Doyle's question that you had completed all of this contract for the sum of \$16,000, you did not remember that the entire drain pipe had been omitted at that time?

A. I knew the tile drain had been omitted. I answered the question that I completed the work covered by the contract, covered in my statement.

Q. This tile drain of \$2300 was omitted?

A. Yes.

Q. Now, Mr. Pollia, you stated the first time that you remembered any question being raised with reference to whether or not you should do the work of installing the fittings in the pits was when you sent that letter of August 29th. Is that so? A. Yes.

Q. Prior to August 29th you had done considerable work in the pits, hadn't you? A. Yes.

Q. Now, this contract, you say, was actually typed up by Mr. Snyder. A. Yes.

Q. Had you had any conversation or any discussion with Mr. Snyder at that time with reference to what was to go into this contract?

A. Yes.

Q. Did you have any conversation or discus-

(Testimony of Andrew A. Pollia.)

sion with Mr. Snyder as to what—as to the agreement between you, as to what you should do and what you should not do?

A. Our understanding——

Q. I do not want any understanding, I ask you the question, did you have any conversation or discussion? A. Yes.

Q. Prior to the drawing up of this contract?

A. When it was being drawn. [69]

Q. Maybe you do not understand me. Your first negotiations for the purpose of submitting a bid were with Mr. Ceriat, were they not?

A. Yes.

Q. Did you have any agreement or conversation or discussion with Mr. Snyder with reference to submitting a bid? A. Yes.

Q. That was prior to the actual drawing up of this contract?

A. It was before; we came to an agreement and then that contract was drawn up, and it was satisfactory to me, and I signed it.

Q. I know, but what I am trying to get at is this, had you had any discussion with Snyder, as the representative of the Flotation Systems as to what you would and what you would not do?

A. I believe the contract states that.

Q. What I am asking you is, Mr. Snyder actually drew up this contract, actually typed it?

A. Yes.

Q. Did Mr. Snyder get the information from

(Testimony of Andrew A. Pollia.)

himself, or from you, with reference to what he put into this contract, or from Mr. Ceriat?

A. He got it from between us, when we discussed it, as to what we would do.

Q. Between whom?

A. Between himself and me.

Q. Mr. Snyder? A. Yes.

Q. What did you mean by this contract when you said, "Complete installation of all gasoline pipe as covered by plans accompanying specifications 9505"?

A. I mean that I will do the portion of the work that I later did.

Q. You mean that you would do that portion that you would do?

A. The portion of the work that should be done in accordance with the plans and the specifications.

Q. Now, that isn't the question I asked you.

A. That is what I mean when I say I will do the work in accordance with the specifications. [70]

Mr. Harloe: I move to strike that out as not responsive to the question.

Mr. Doyle: We object to the motion, I think it is very responsive.

Mr. Harloe: Q. I will read it to you again, Mr. Pollia: "Item 1: Complete installation of all gasoline pipe line as covered by plans accompanying specifications 9505," and I will ask you what that means.

A. Well, that paragraph, there, precedes what I intended to do.

(Testimony of Andrew A. Pollia.)

Q. That is not my question. Will you read it again?

(Question repeated by the reporter.)

A. That means the work following this paragraph, Item 1, I will do in accordance with the plans and specifications.

Q. That means in accordance with the plans and specifications? A. Yes.

Q. If that means that, why did you go on and say, "including necessary excavation"? That refers to the digging of the pits, doesn't it?

A. Yes.

Q. "—back-fill, replacement of red rock surface." A. Yes.

Q. What does that apply to, Mr. Pollia?

A. Well, at some places the position of the surface pavement had been disturbed, there, and we should replace it.

Q. In other words, there was a red rock surface on a roadway that had to be disturbed?

A. Yes.

Q. Where it had to be disturbed you would replace the surface of the road? A. Yes.

Q. "—welding and testing all joints, and all connections to pit boxes." If you were not to do any of the fittings in the pit boxes why didn't you mention it in the contract?

Mr. Doyle: Objected to as calling for the conclusion and [71] opinion of the witness, and also being argumentative.

(Testimony of Andrew A. Pollia.)

The Court: I will permit the question.

Mr. Harloe: I will go back first. All the fittings that were placed in the pit boxes were shown on the plans accompanying the specifications 9505, weren't they? A. That is right.

Q. They were all shown there? A. Yes.

Q. Will you read that first sentence again, please? A. Do you wish me to read it?

Q. Yes.

A. "Complete installation of all gasoline pipe line as covered by plans accompanying specifications 9505."

Q. "All gasoline pipe lines" shown by the plans accompanying the specifications 9505 show a lot of fittings in the pits, don't they?

A. Just a minute, this item 1, here——

Q. Just answer my question. The plans show fittings in the pits, don't they?

A. The pipe line plan does not show any fittings in the pit, now——

Q. Just a minute.

Mr. Doyle: Let the witness finish.

Mr. Harloe: He can answer "Yes" or "No." I want a direct answer.

The Court: Aren't the plans the best evidence of what they show?

Mr. Harloe: That is so.

Q. Don't these plans, Mr. Pollia, doesn't plan 1210-43-3 show fittings in the pits?

A. Yes, but Item 1 says the gasoline pipe line,

(Testimony of Andrew A. Pollia.)

Mr. Harloe. I agreed to install a gasoline pipe line.

Mr. Harloe: I move to strike out the answer as not responsive to any question.

Q. Now, after you stated, "Complete installation of all gasoline [72] pipe line as covered by plans accompanying specifications 9505," you also agreed to do certain other things? A. Yes.

Q. Which include "necessary excavations, back-fill, replacement of red rock surfacing, repairs to any existing roads, welding and testing all joints, and all connections to pit boxes." Isn't it a fact, Mr. Pollia, that all joints outside of pit boxes were buried in the ground or were to be buried in the ground? A. Yes.

Q. How deep were they to be buried in the ground?

A. There was nothing over 3 feet 6.

Q. They were approximately 3 feet 6, that they would be buried in the ground? A. Yes.

Q. Were those joints and connections to the pit boxes that were buried in the ground, welded and tested prior to the back-fill that you contracted to do?

A. We tested that work out in sections as we proceeded with the work.

Q. Then that would be before it was covered over, or back-filled, as you call it? A. Yes.

Q. Now, there was a Naval Inspector there during all of this work? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Mr. Leahy? A. Yes.

Q. He was present when the joints and fittings to the boxes were welded and tested prior to the filling of them up? A. Yes.

Q. Prior to the back-fill? A. Yes.

Q. Now, I show you this work order 273, that you testified to, and which was shown to you by Mr. Doyle, and 274, they are your Exhibits 3 and 4; they are for exactly the same work, aren't they?

A. I believe, as far as I remember, one of these orders was for Flotation Systems work for some other contract over there.

Q. These orders 273 and 274 were for the doing of some work that [73] had nothing to do with this contract of yours, at all, weren't they?

A. I think that you are confusing it.

Q. Just answer my question, that is all I want. The Court: Read the question.

(Question read by the reporter.)

A. They did not have anything to do with the original contract.

Mr. Harloe: Q. They were not in the pits, either, were they?

A. I don't understand your question.

Q. Well, let us put it this way: Mr. Pollia, wasn't that for work to be done on some pits that were quite a ways away from where you were working? A. No, we were working close by.

Q. These work orders, 273 and 274, they were absolutely extra work, weren't they? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. They were work to be put in by you on some fuel pits approximately half a mile from where these pits were? A. Yes.

Q. Now, this work order, Exhibit No. 8, dated 7/1/40, "To cover field pipe work as per contract of May 28, 1940, \$16,040"—that is signed by whom?

A. It looks like Taylor.

Q. This was nothing more or less than a confirmation of your contract, was it?

A. That is right.

Q. It was a notice to go ahead and do the work? A. Yes.

Q. Now, you received a letter of August 7, 1940, Mr. Pollia, stating, "You are authorized to proceed with the following extra work in addition to that covered by our contract agreement dated May 28 at the unit prices shown below," and then the unit prices are stated. Now, "Install 2 additional 6-inch welding tees, 2 6-inch welding neck flanges"—they were not shown in the original plans but were on the revised plan, were they not?

A. I don't know.

Q. You don't know that? A. No. [74]

Q. Wasn't that the reason for giving you this work order?

A. Well, I just don't know how that would come about.

Q. I say you don't know?

A. It has been a year and a half since I did this work.

(Testimony of Andrew A. Pollia.)

Q. But you proceeded to do that work after you got that order? A. Yes.

Q. Now, you say you went to Los Angeles and submitted this letter of August 29? A. Yes.

Q. And you had a conversation there with Mr. Kalte, or Mr. Taylor, or Mr. Henry, was it?

A. Mr. Henry.

Q. Mr. Henry and yourself? A. Yes.

Q. And at that time you were given the \$1000 that you testified to, and then you stated that the next day you were told—I do not want to misquote you—you were given \$1000 there, and thereafter Mr. Henry or Mr. Taylor came to Alameda and spoke to you about this amount you demanded.

A. Mr. Kalte gave me \$1000.

Q. There is Los Angeles?

A. In Los Angeles.

Q. And told you to come back?

A. And told me to come back next day and I would get the balance.

Q. Wait a minute, I know all that, but what I want to get at is, you got \$1000 in Los Angeles, and then after a conversation you left and came back up to the job at Alameda? A. Yes.

Q. Now, who was it that came up from Los Angeles and spoke to you about this at the job?

A. Mr. Taylor.

Q. Mr. Taylor? A. Yes.

Q. And at that time Mr. Taylor told you that he had been informed that this work for the instal-

(Testimony of Andrew A. Pollia.)

lation of all the fittings in the pits was included in the original contract?

A. Not at our first meeting. [75]

Q. I did not ask you that. I will ask you this question, I will withdraw the first question and ask it over again: At the time Mr. Taylor came up to the job at Alameda after you had been to Los Angeles and left, Mr. Taylor told you that he understood the contract to mean that you were to do all the work in the pits, and that it was not extra work? A. No.

Q. What did he tell you?

A. He said he would let me know later about the payment.

Q. Then did he write you a letter?

A. No, he went across to San Francisco, I believe.

Q. Did he come back to Alameda and see you on the job? A. He came the same day.

Q. And he spoke to you on the job?

A. Yes.

Q. And then he told you that, did he?

A. It was at our second meeting that he told me.

Q. I don't care whether it was at the third or fourth, what I want to get at is, Mr. Pollia, that it was on the job at Alameda after you had been to Los Angeles that Mr. Taylor informed you that he believed that all of this work that you were

(Testimony of Andrew A. Pollia.)

demanding as extra, that is, fittings in the pits, was contained in the contract?

A. I don't understand the question.

Q. If you do not understand me I will try to make it clear. What I want to get at, Mr. Pollia, is, you had been to Los Angeles and had a conversation with different men down there.

A. Yes.

Q. You had received a check for \$1000 and came back up here to the job? A. Yes.

Q. And then, after that, Mr. Taylor came up to the job? A. Yes.

Q. Now, during sometime while Mr. Taylor was up there on the job, at that time he told you that he believed or had been [76] informed that his contract provided that you should do all the work in the pits, didn't he? A. Yes.

The Court: I think at this time we will take our noon recess. We will meet at 2:30.

(A recess was here taken until 2:30 o'clock p. m.) [77]

Afternoon Session
2:30 o'Clock P. M.

ANDREW A. POLLIA,

Cross-Examination
(Resumed)

Mr. Harloe: Q. Mr. Pollia, I want to refer again to these extra work orders 273 and 274. Those were orders for doing work in what were known as the fueling pits? A. Yes.

Q. In your original negotiations with Mr. Ceriat, any work in the fueling pits was excepted, it was not put into your contract, was it—that was out?

A. Well, all work inside of the pits was out.

Q. That is what you say, but I am speaking of the fueling pits. In your original negotiations, prior to entering into the contract, in your negotiations with Mr. Ceriat, the fueling pits were excluded, weren't they?

A. Yes, they were excluded.

Q. Now, it is your understanding that all work in the pits was out, you had nothing to do with that, at all? A. Yes.

Q. We went down to Item 3, that was the tile drain pipe. The amount of \$2300 in your contract was deducted for the omission of the tile drain, that is so, is it not? A. Yes.

Q. Mr. Pollia, if it was your interpretation that all work under this contract was excluded in the pits, how do you explain Item No. 4, "Paint-

(Testimony of Andrew A. Pollia.)

ing of all piping installed by us inside of pit boxes A, B, C, D and E''?

A. We got an order to test the pipe installed by us, and we had to make the flange connection at the pit, and it would not have been proper or workmanlike to make the connection outside of the pit, and we agreed to install that piece of pipe inside of the pit, and flange it off so we could test that section that was protruding inside of the pit, and we agreed to paint that. [78]

Q. That is your answer to painting of all piping inside of the pit boxes? A. Yes.

Q. Going back, so that there will be no question in regard to work orders 273 and 274, your contract provided for work in pit boxes A, B, C, D and E, that is correct? A. The connections.

Q. Regardless of that, your contract only mentions those pit boxes? A. Yes.

Q. The work mentioned in 273 and 274 was for Pit F, wasn't it? A. Yes.

Q. So they were not in this contract, at all?

A. No.

Q. That was entirely extra work that they had to do? A. Yes.

Q. Do I understand you to testify that you completed the work under 273 and 274?

A. I completed 273, and then notified Mr. Snyder when they received the equipment, such as meters, etc.—

Q. In other words, Mr. Pollia—

(Testimony of Andrew A. Pollia.)

A. I would like to complete the answer.

Q. Pardon me.

A. They were to furnish all the material required to do the work in the fueling pits, and at the time that we were doing the work in 274 the material was not there.

Q. That was principally what was called hose reels, was it not?

A. Hose reels, meters, all kinds of special equipment. They never let me know anything about it, and that is why I did not get over to complete 274.

Q. You mean they did not notify you of the arrival of that material? A. That is right.

Q. But, nevertheless, you made a charge for the doing of that work, didn't you?

A. I do not believe I did.

Q. Didn't you? A. No, I do not think so.

Q. Now, you mentioned that you had a meeting at the Commander's office with respect to this work. Was not that meeting at [79] the Commander's office by reason of labor difficulties, Mr. Pollia? A. No.

Q. It was not? A. No.

Q. Hadn't a question arisen as to whether pipe fitters should do the work and you were requested to go ahead, and the reason for the request was so that men could be hired to do the work?

A. We had our own organization on the job at all times.

Q. Just answer the question.

A. It was not so, no.

(Testimony of Andrew A. Pollia.)

Q. The meeting at the Commander's office had nothing to do with labor troubles, at all?

A. Not that I recall.

Q. You received a letter, didn't you, Mr. Pollia, from the Flotation Systems, demanding that you proceed with the work?

A. Yes.

Q. And was it not by reason of that fact that a meeting subsequently occurred in the Commander's office?

A. A meeting occurred at the Commander's office? A meeting occurred at the Commander's office before that letter was written.

Q. Have you got that letter?

A. No, I have not.

Q. Do you remember the letter?

A. I do not remember the letter.

Q. Well, if I showed you this, would it refresh your memory? Pardon me, I will show it to Mr. Doyle.

Mr. Doyle: That is all right.

A. This is a copy of the letter I received.

Mr. Harloe: Q. That is the letter that you received. Now, that letter was written to you by the Flotation Systems, Mr. Pollia, by reason of the fact that the work was not progressing, was it not?

A. I don't know why it was written.

Q. What is that?

A. I don't know why it was written.

Q. You don't know why it was written?

A. No. I had six men on the job at all times.

(Testimony of Andrew A. Pollia.)

Q. Do you remember your testimony of the meeting on the job when Mrs. Snyder was present?

A. At which office?

Q. I mean the Flotation Systems office, or your work office over there on the job. You testified, if my memory serves me correctly, there was a meeting at the job site over there on an evening when Mrs. Snyder came over with Mr. Snyder, and Mrs. Snyder was at the office. A. Yes.

Q. That was prior to your going to Los Angeles, was it not? A. Yes.

Q. And at that meeting I understood you to say that Mr. Snyder made a list of what was done?

A. Yes.

Q. In other words, he made a tabulation, exact tabulation of all the work that was done in the pits? A. Yes.

Q. And this regardless of the fact whether you consider it in or out of your contract?

A. Yes.

Q. At that time Mr. Snyder made a tabulation of everything that had been done by you in the pits at that time, didn't he? A. Yes.

Q. Will you look over this and see if that is the tabulation as you remember it? Do not misunderstand me, I do not expect you to remember every item, or the amount of the items, but, generally speaking, is that the tabulation?

A. That is not the tabulation.

Q. That is not the tabulation? A. No.

(Testimony of Andrew A. Pollia.)

Q. Have you got the one that was made for you? A. I delivered it with my statement.

Q. You delivered it to Flotation Systems?

A. Yes.

Q. Was that tabulation in typewriting, or in longhand?

A. It was a typewritten tabulation.

Q. Mr. Pollia, do you remember about what date that was, that that [81] inventory was made? Your letter that you took to Los Angeles is dated August 29. Approximately how long before you went to Los Angeles was that tabulation made, if you remember?

A. I drove to Los Angeles that evening.

Q. You left immediately after the tabulation was made? A. Yes.

Q. This is dated September 7. Maybe the date is wrong.

A. This is not the tabulation.

Q. That is not the one I am trying to locate. I am trying to get the tabulation, the one that you got before you left. A. No, that is not it.

Q. None of these was the one? A. No.

Q. I will ask you whether that was the one that was made out. A. No, that is not.

Mr. Harloe: I think that is all.

Redirect Examination

Mr. Doyle: Q. Mr. Pollia, with reference to any plan that you were asked about, 1210-43-3, or your proposed contract, which is marked for iden-

(Testimony of Andrew A. Pollia.)

tification as Exhibit 1, and the ultimate contract, which is marked as Exhibit 2, and with reference to Exhibit 1 marked for identification, which you say was the one that was prepared by Flotation Systems, in which they use the words, "Including connections to the following number of pit boxes," and then your Exhibit 2, in which you use the words, or in which Mr. Snyder used the words, "and all connections to pit boxes," do you recall a conversation directed to that point, or any extra work order, and primarily with reference to some pipe wrapping that occurred in San Francisco subsequent to the time that Flotation first raised the contention that the work that you were doing over at the Base included all of the work in all of the pits? Do you remember that event? [82]

A. That occurred at Mr. Harloe's office.

Q. All right, who was there?

A. Mr. Tamba.

Q. Who is he?

A. He was an attorney who represented me at the time, at the time of the start of this litigation.

Q. There was a Mr. Tamba? A. Yes.

Q. Kalte?

A. Yes, Mr. Snyder and Mr. Harloe.

Q. What was the substance of that conversation?

A. The discussion started as to the work included in the pits, and Mr. Tamba told them it only included work to the pit and not inside of the pit.

(Testimony of Andrew A. Pollia.)

They dropped that subject and went on to some pipe wrapping I had furnished.

Q. What was said about the pipe wrapping?

A. Well, that my job that is covered there in the statement was some 1700 feet, and Mr. Snyder objected to the amount that I covered, and I understood him to say he was willing to take it up, and then he made a statement that the price was too high.

Q. What was the pipe wrapping?

A. I made the statement that—he asked me for a price to do the wrapping, and I gave him a price, and he submitted to me an order to proceed to wrap the pipe at so much a foot.

Mr. Doyle: That is all.

Recross Examination

Mr. Harloe: Q. Isn't it a fact at that meeting in my office the only conversation that took place between myself and Mr. Tamba, after the question was raised as to whether the contract provided for the doing of the work in the pits, that then the meeting adjourned, Mr. Tamba saying, "Well, we can't get anywhere," and we stopped?

A. No, I don't remember that.

Mr. Harloe: That is all.

Mr. Doyle: That is all. [83]

Mr. Stark: I think there are two or three questions that I would like to ask to develop from this witness the only point of the complaint in intervention that was denied by the Flotation Systems,

(Testimony of Andrew A. Pollia.)

and in order to save the possibility of my client, who has been here all day, waiting to go back to work, I would like to direct two or three questions to this witness out of order.

Mr. Harloe: That is perfectly agreeable to us.

Mr. Stark: Q. Mr. Pollia, on this Flotation Systems job you had a Northwest power shovel, did you not? A. Yes.

Q. From whom did you obtain that shovel?

A. I rented that from a concern named the Shanmac Company.

Q. A co-partnership consisting of Mr. Shannon and Mr. Mackie? A. That is right.

Q. You rented it on an hourly basis, did you not? A. Yes.

Q. I show you a statement dated August 1, 1940, and a statement dated August 22, 1940, showing a balance due on August 1 of \$302.68, and on August 22nd of \$746.05, making a total of \$1048.63, and ask you if that is the charge for the use of that shovel? A. Yes.

Q. Has it ever been paid?

A. Not that I know of.

Q. You have never paid it?

A. No, I have never paid it.

Mr. Stark: We offer those in evidence as Intervenor's Exhibit 1.

(The statement of August 1, 1940 and August 22, 1940 are marked "Intervenor's Exhibit 1.")

(Testimony of Andrew A. Pollia.)

Mr. Harloe: One question, with reference to Mr. Shanmac's bill. All dealings with Mr. Shanmac were, he was your employee, Mr. Pollia?

A. Yes.

Q. You employed him and you paid him?

A. Yes.

Mr. Stark: He was not an employee. [84]

Mr. Harloe: Pardon me, I did not mean that.

Q. With reference to any work that was done by Shanmac Co., it was done under your authority and your direction, and not under the Flotation Systems? A. Yes.

Mr. Harloe: That is all, Mr. Pollia.

Mr. Doyle: That is all.

THEODORE TAMBA,

Called for the Plaintiff; Sworn.

Mr. Doyle: Q. What is your name?

A. Theodore Tamba.

Q. And your profession?

A. Attorney-at-Law.

Mr. Harloe: We will admit Mr. Tamba is properly qualified to and entitled to practice in all Federal courts.

Mr. Doyle: Thank you.

Q. Mr. Tamba, you are acquainted with a number of the parties and some of the matters involved in this litigation?

(Testimony of Theodore Tamba.)

A. Well, as I told you, Mr. Doyle, when you telephoned me, some of the documents and occurrences are a little hazy in my mind, but, generally, I think I am familiar with certain points at issue in 1940.

Q. Mr. Tamba, would you kindly testify as to a conversation that occurred at Mr. Harloe's office, in which Mr. Pollia, yourself, Mr. Kalte, Mr. Snyder, and Mr. Harloe were present?

A. I recall such a conversation, or a conference, I might say, in Mr. Harloe's office, the date or the time of which is a little hazy in my mind, I don't recall if it was 1940 or 1939, it seems to me as though it was in the morning, it might have been late in the morning or afternoon, or early afternoon, I went to Mr. Harloe's office with Mr. Pollia, whom I was representing at the time; I recall Mr. Harloe being present, and some [85] representative from the Flotation Systems, the name of the man is not clear to me at this time, and a man who was a foreman or superintendent for the Flotation Systems people also was present at that time, and a man I believe by the name of Snyder, you have mentioned the name to me over the telephon, and that seems to be the name. The purpose of this conference was to try to adjust a certain dispute which had arisen between Mr. Pollia and the Flotation Systems, regarding work done by Mr. Pollia on the Flotation contract at the Alameda Air Base. There was a complaint by Mr. Pollia to the effect that the Flotation had not

(Testimony of Theodore Tamba.)

paid him according to the contract, that is, the periodical payments, as they fell due; as to the amount of the payment I do not recall, but we went to Mr. Harloe's office and the first thing brought up, that is, the principal item of dispute was whether or not work done by Mr. Pollia inside of certain pits, which were receptacles for gasoline, was covered by the contract, or was covered by certain extra work orders. As I recall, the contract employed the language, "to the pits," and I took the position, with Mr. Pollia, that certain work was covered to the pits, that meant work up to the pits, and that the work inside of the pits was not covered by the original contract, and that was extra work, or additional work done under the terms of the contract, and that Mr. Pollia's position was further substantiated, not by the language of the contract, but by reason of the fact that certain extra work orders had been issued to do this work inside of the pits. Mr. Harloe and I could not come to any agreement as to that phase of the contract, and then there was some discussion about wrapping. I do not remember exactly the details, or the figures as to wrapping; I remember that Mr. Snyder, who was the foreman, [86] insisted Mr. Pollia did not do all of the required work in his claim against Flotation, and Mr. Pollia made the statement, "Do you want me to go further and take it up and show it to you?" And then something came up about Mr. Pollia charging too

(Testimony of Theodore Tamba.)

much for the wrapping, and Mr. Pollia said, "I submitted a figure to you and you accepted, and I did the work after you accepted my figure, and proceeded to finish the work," that is these wrappings, whatever they were. Then there was a discussion that Mr. Pollia complained about that because his payments were not forthcoming it had embarrassed him with his material men, he had not been able to make payments; that he made a trip to Los Angeles and received a payment on account; that he did not receive that payment, and had met with some of the officials, and the conference terminated at that point. That is my recollection, except that there was discussion between Mr. Harloe and me regarding the payment of certain claims which were made against the Flotation by reason of work furnished to Mr. Pollia by certain material men, and Mr. Harloe asked me in Mr. Pollia's presence if it would be all right to pay those claimants, or those material men, whoever they were, and I said that was agreeable, I think I asked Mr. Pollia at the time. Then there was some question about a shovel or piece of equipment, I do not recall who the material man was, or the claim, whether or not all of the work had gone into the Flotation project, or whether it had gone into some other project of the Central California project—I do not want to be bound by these names, because my memory is rather hazy about names; and Mr. Pollia was specifically asked if all

(Testimony of Theodore Tamba.)

of this work had gone into the Flotation job, and he said "Yes." He said the portion of the material *man* [87] that went into the other job was taken care of by the Central California Company. I think that some subsequent memorandum or agreement was submitted to me by Mr. Harloe, I have not seen it since the file was turned over to you. This statement which Mr. Harloe submitted to me I returned to Mr. Harloe and told him we could not sign in that form. In that way nothing was done regarding payment of these material men, as I recall, and that was the last I had to do with the case.

Q. Was there any conversation relative to the contract that was entered into on May 27, 1940?

A. There was a statement that considerable work was done by Mr. Pollia, that he had done this work and no question had been raised until Mr. Pollia had gone to Los Angeles in regard to that work, whether that was covered in the original contract, or not.

Mr. Doyle: That is all.

Cross Examination

Mr. Harloe: Q. In any event, Mr. Tamba, we arrived nowhere at an adjustment?

A. No. Mr. Harloe, you and I were at a very divergent point of view as to the merits of the case.

Mr. Harloe: That is all.

EUGENE CERIAT,

Called for the Plaintiff; Sworn.

Mr. Doyle: Q. What is your name, please?

A. Eugene Ceriat.

Q. And your residence?

A. 1220 South Lake street, Los Angeles.

Q. What is your occupation?

A. Construction work.

Q. How many years have you been so engaged?

A. 40 years.

Q. 40 years? A. Yes. [88]

Q. Are you a graduate of any institution having a study course of construction engineering?

A. Yes.

Q. Where? A. In Switzerland.

Q. When? A. In 1901.

Q. In the first part of 1940 were you employed by a concern in Los Angeles?

A. Yes, I was contracting with the Pacific Coast Lighterage Company.

Q. You were contracting with the Pacific Coast Lighterage Company? A. That is right.

Q. Was the Pacific Coast Lighterage Company connected with the Flotation Systems, Inc.?

A. I believe the president of the Pacific Coast Lighterage Company was the president of the Flotation Systems.

Q. You were acquainted, then, with Mr. Henry?

A. Yes.

Q. Do you know Mr. Kalte? A. Yes.

(Testimony of Eugene Ceriat.)

Q. Mr. Snyder? A. And Mr. Snyder.

Q. Is Mr. Kalte also a member of the organization, of the Pacific Coast Lighterage Company?

A. I know he is a member of the Flotation, and he was working with the Pacific Coast Lighterage Company.

Q. Now, as a matter of fact, the Pacific Coast Lighterage Company and the Flotation Systems, Inc. have the same business office in Los Angeles?

A. Correct.

Q. In the early part of 1940 were you engaged on a job for the Pacific Coast Lighterage Company at Manteca? A. Yes.

Q. That is down the Valley? A. Yes.

Q. While you were engaged on this job were you advised about the Flotation job at the Naval Base at Alameda?

A. I actually went to work for the Flotation, construction work.

Q. You received word, then, direct from the Flotation Company, [89] to make an estimate of the job that the Navy wanted done at its Base at Alameda? A. Yes.

Q. And you proceeded to Alameda to make that estimate?

A. Well, I went to Alameda to look at the ground, and I made the estimate in Los Angeles.

Q. And it finally developed that the Flotation Systems got the job? A. That is right.

Q. For a short period of time you were running

(Testimony of Eugene Ceriat.)

the job at Manteca, and you were also running the job at Alameda, were you? A. Yes.

Q. And finally you finished the job at Manteca and devoted your whole attention to the Alameda job? A. That is right.

Q. When you finally came up to the Alameda job and devoted all of your attention over there, what was the general nature of the contract that the Flotation Systems had with the Government?

A. To excavate and put the gasoline tanks underground, building the concrete supports for the tanks, pipe lines, concrete pits.

Q. I take it, then, that the Flotation Systems was engaged in all stages of this work at various times, is that right? A. Yes.

Q. And did your job in that Base finally reach the stage of construction where it became necessary to do the pipe installation? A. That is right.

Q. When your job reached that basis what did you do about obtaining some figure for pipe installation?

A. I had asked Mr. Pollia to make a water connection.

Q. That was just to make a water connection?

A. He was going to put in a water connection for another firm, and I asked him if we could get the water, and I asked him if he would give us [90] a price for the pipe work.

Q. What did he tell you?

A. He said he would be glad to.

(Testimony of Eugene Ceriat.)

Q. Did you get a price from anybody else on the pipe work?

A. Yes, I asked another contractor, I don't remember his name now.

Q. A man by the name of Tobin?

A. Yes.

Q. So you asked Tobin and Pollia for a price on the pipe work? A. Yes.

Q. Did you get a price from Tobin and Pollia?

A. Yes.

Q. When you got the price from Tobin and Pollia what did you do?

A. Well, I decided that Pollia would be a far better man, because Tobin was more of a clay pipe man, and if we brought another man on the job we would have work done by two sub-contractors, and then I thought Pollia would be the best man, because he was doing some work right close by there at the boathouse.

Q. When you finally got a figure from Mr. Pollia did you communicate that information to Los Angeles? A. Yes.

Q. What means did you take to communicate that knowledge to Los Angeles?

A. I think I sent a letter to Los Angeles asking if they would accept the bid. I explained the labor situation would be pretty hard here—I sent them a letter and they told me,—I got a letter back from Mr. Henry asking me to have Mr. Pollia draw a contract.

(Testimony of Eugene Ceriat.)

Q. You wrote down to the Flotation Systems office, and Mr. Henry, the president, wrote back to you and asked you to have Pollia draw a contract?

A. That is right.

Q. Did Mr. Pollia draw a contract?

A. I think he did.

Q. I will show you a document and ask you to look at that and see if that will refresh your memory.

A. I think that is it. [91]

Q. That looks like the document that Mr. Pollia submitted in response to your request for an estimate or such a statement?

A. Yes, that is it.

Q. There is some longhand writing on that document.

A. That is in my own handwriting.

Q. The handwriting, longhand, on that letter of May 27, Plaintiff's Exhibit 1 For Identification, is in your handwriting?

A. Yes.

Q. That was a document that Mr. Pollia sent in response to your suggestion and your instructions?

A. I don't know if it was the same document, I don't remember exactly, but there was some discussion between Pollia and the Flotation, I believe, at that time, and then Mr. Pollia and Mr. Snyder agreed together to a new agreement.

Q. Now, I will show you Plaintiff's Exhibit No. 2, and ask you to look at that for a moment.

A. Yes.

Q. That is the agreement?

A. Yes.

(Testimony of Eugene Ceriat.)

Q. Did you participate in this discussion or this getting together between Mr. Pollia and Mr. Snyder as to this agreement? A. No.

Q. Were you present?

A. No, I was not present. We discussed the old agreement, and it seemed Mr. Pollia didn't agree to my agreement, so I left them to discuss it.

Q. Then this agreement, Plaintiff's Exhibit 2, was discussed between Mr. Snyder and Mr. Pollia?

A. Yes.

Q. And Plaintiff's Exhibit 1 For Identification was the agreement that was discussed between you and Mr. Pollia? A. Yes.

Q. Mr. Pollia and yourself did not agree about Plaintiff's Exhibit 1 For Identification?

A. No.

Q. You left the agreement up to Mr. Snyder and Mr. Pollia? A. Yes. [92]

Q. Which is in Plaintiff's Exhibit 2?

A. Yes.

Q. And when that agreement was finally reached, there is your signature on here, did you read this agreement over before you signed it?

A. I put my signature on there.

Q. That agreement was accepted by you 5/28/40? A. Yes.

Q. Before you signed this agreement, you had a title of construction engineer at the time?

A. My title was superintendent of construction.

(Testimony of Eugene Ceriat.)

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A. That is right.

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Q. And Plaintiff's Exhibit 1 For Identification was the agreement that was discussed between you and Mr. Pollia? A. Yes.

Q. Mr. Pollia and yourself did not agree about Plaintiff's Exhibit 1 For Identification?

A. No.

Q. You left the agreement up to Mr. Snyder and Mr. Pollia? A. Yes. [92]

Q. Which is in Plaintiff's Exhibit 2?

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Q. And when that agreement was finally reached, there is your signature on here, did you read this agreement over before you signed it?

A. I put my signature on there.

Q. That agreement was accepted by you 5/28/40? A. Yes.

Q. Before you signed this agreement, you had a title of construction engineer at the time?

A. My title was superintendent of construction.

(Testimony of Eugene Ceriat.)

Q. You state in Item 2 that the work was to be done to pit boxes.

A. I read it carefully, but I did not go into the details, because it was the matter on which they agreed among themselves and it was satisfactory to me.

Q. In other words, then, Mr. Snyder and Mr. Pollia agreed upon what was to be done, and as far as your signature is concerned it was merely mechanical, and when they got together and drew up this agreement and said it was satisfactory to both of them you signed it?

A. I approved it, so we could forward it to Flotation Systems' office for signature.

Q. Did you send it to Los Angeles for signature?

A. I believe Mr. Snyder sent it.

Q. Are you familiar with the handwriting in ink, "O. K. James Henry"?

A. It looks very familiar to me.

Q. Who is James Q. Henry?

A. President of the Flotation Systems.

Q. While the agreement, Plaintiff's Exhibit 1 for Identification, or Plaintiff's Exhibit 2 in evidence were being discussed, was Mr. Pollia doing any work for the Flotation people at that time, or had he actually started to work?

A. I think he either started the same day or the day before, in preparing for the water line, if my memory is correct.

(Testimony of Eugene Ceriat.)

Q. In preparing for the water line, did he do any actual laying [93] of pipe or connecting of pipe underground for the purpose of connecting together of the system, over there, have it advanced to that stage? A. I do not think so.

Q. Did you finally receive some authorization from the Los Angeles office of Flotation Systems, permitting Mr. Pollia to go ahead?

A. As soon as we got the contract back.

Q. When you got the contract back, signed by Mr. Henry, you got the signature of Mr. Pollia, did you not? A. Yes.

Q. And you told him to go ahead?

A. Yes.

Q. And he went ahead on the job?

A. Yes.

Q. While he was doing this work over there, were you still engaged in doing that part of the job which was being undertaken by the Flotation Systems? A. Yes.

Q. And both of you continued along doing a part of your respective work, is that right?

A. Yes.

Q. There was some question about the availability of material, was there not?

A. Well, there was a little delay on different fittings.

Q. Who, incidentally, was to supply the material? A. The Flotation Systems.

Q. Do you know of your own personal knowl-

(Testimony of Eugene Ceriat.)

edge that Mr. Pollia was not able to progress with the work by reason of the fact that the material was not being delivered in time?

A. Yes. I made two trips to Los Angeles to find out if we were going to get the material, because Mr. Pollia was there on the work with the men, and when I returned I promised Mr. Pollia that the material would be there, and I think the material was delayed.

Q. You made two trips to Los Angeles on that matter? A. Yes.

Q. The agreement, Plaintiff's Exhibit 2, Items 1, 2, and 3, [94] the work to the pits, what type of work was inside of the pits?

A. Inside of the pit, if I remember correctly, it was primarily the work of the Aqua people, certain equipment that belonged to the Aqua, who were supposed to do the installation.

Q. In other words, the Aqua people had their own material and own equipment?

A. Certain part, yes.

Q. That work was done by the Aqua people?

A. Yes.

Q. Do you know of your own knowledge whether or not the Aqua people actually had some of the mechanics doing the work on the inside of the pits?

A. Yes, they had a man there; I don't know just when he started, but I would say about the middle of July, or maybe sooner, putting in some special equipment inside the tank, inside of the pit.

(Testimony of Eugene Ceriat.)

Q. Do you know, of your own knowledge, that the Aqua mechanic, or whatever his legal status was—do you know whether or not the Aqua people who were doing the work on the inside of the pit with their equipment, was the connecting up of the installation to the pit?

A. Well, it was connected with the installation of the pit.

Q. Who did the connecting up of the Aqua work, the Aqua man, or Mr. Pollia?

A. The Aqua man did some of the work.

Q. How many pits were there?

A. I think it was—if I saw the plans I could tell better. I will have to count them on the plan. We had sixteen pits, one on top of each tank, and then I believe there was a general pit connecting two tanks, which supplied two or four—it was eight on one side, sixteen, and they had three or four others.

Q. All these pits were dug out in the ground, were they? A. Yes.

Q. And at the bottom of the pit you put a large metal storage tank?

A. There were sixteen, they were on top, storage tanks. [95]

Q. Let us start at the very bottom. First of all, you had the storage tanks, is that right?

A. The steel tanks, 25,000-gallon steel tanks.

Q. Then on top of the steel tanks you had what?

A. A concrete pit.

(Testimony of Eugene Ceriat.)

Q. What did you have on top of the concrete pit? A. That is the tank with the cover.

Q. 25,000-gallon steel container or tank?

A. Gasoline tank.

Q. Which would be connected with some equipment or valve in the pit? A. Yes.

Q. On top of this pit was a spout of the automobile type? A. Yes.

Q. Then on top of the pit, on the surface of the ground, you had a cover?

A. A wood cover.

Q. What was the special equipment in the tank, itself, the equipment in this rectangular pit?

A. The tank, itself, and each side of the tank, there was special equipment installed by the Aqua people, and then it came up and connected inside of the pit.

Q. So the 25,000-gallon steel tank and all the equipment in the pit was all Aqua work, is that the idea? A. To install the tanks.

Q. And the connection of the work in the pit?

A. Special equipment, yes.

Mr. Doyle: Cross-examine.

Cross-Examination

Mr. Harloe: Q. About what percentage of the fittings in the pit was special equipment of the Aqua people, was it approximately a quarter, one-third, one-half, or what?

A. I could not tell you exactly, because I don't remember. [96]

(Testimony of Eugene Ceriat.)

Q. You don't remember? A. No.

Q. Now, then, Mr. Ceriat, let me ask you this question with reference to your negotiations with Mr. Pollia, for the purpose of having him enter into a contract, you had certain conversations with him and certain negotiations with him relative to a contract, didn't you, first?

A. Yes, checking the drawings.

Q. Checking the drawings and going over them to see what there was to be done, and then after that he gave you a figure? A. Yes.

Q. Thereafter you wrote to the Flotation Systems in Los Angeles, giving them the quotation, or what Mr. Pollia had agreed to do, didn't you?

A. No, first I sent a letter to Los Angeles, asking if they would be interested to take a bid.

Q. After all that had taken place, then you and Mr. Pollia took the plans and specifications, and Mr. Pollia gave you a figure as to what he would do it for?

A. Mr. Henry wrote me a letter for Pollia to submit a price, and when he submitted me that price I checked it, and I wrote out the form of the bid, and it seems we did not get together.

Q. I do not think I make myself clear. After all of that was done, Mr. Ceriat, then Mr. Pollia and you did check over the work that was to be done, and Mr. Pollia said, "I will do it for so much," did he?

A. Well, we checked exactly what work was to be done with Mr. Snyder.

(Testimony of Eugene Ceriat.)

Q. But, in any event, on May 23 you did write to the Flotation Systems in Los Angeles, didn't you? A. Right.

Q. Is this the letter that you wrote with reference to that? A. Yes.

Q. That is the letter that you wrote to them?

A. Yes.

The Court: We will take our ten-minute recess.
(After recess.) [97]

Mr. Doyle: Q. Mr. Ceriat, Mr. Harloe wants to interrogate you about a letter here which is dated May 23, 1940. Is that a letter that you had something to do with, or wrote to the Flotation Systems? A. Yes.

Q. Is that your signature? A. Yes.

Q. Is there any other signature appearing on there? A. No.

Q. There is nothing on there which shows Mr. Pollia's signature?

A. No, that is my proposal, I sent over to the Flotation.

Q. That has nothing to do with Mr. Pollia. That is the proposition that you wrote to Flotation to have Mr. Pollia accept? A. Yes.

Q. Mr. Pollia would not accept it?

A. I sent them this letter, and then when they answered me they said to have Mr. Pollia draw the contract, and this is the one I sent down to Los Angeles.

Mr. Harloe: Q. Mr. Ceriat, up until the time

(Testimony of Eugene Ceriat.)

that you wrote this letter to Flotation Systems and sent it to Los Angeles, you had been negotiating with Mr. Pollia for this contract, hadn't you?

A. We had been discussing it.

Q. At that time had you discussed the question of installing equipment in the pits with Mr. Pollia?

Mr. Doyle: Just a minute. At this time the plaintiff will object, upon the ground that the document upon which the witness is being interrogated is dated May 23, 1940, and was a document which was transmitted by this gentleman to his employer at Los Angeles. There is nothing in the document to show that Mr. Pollia had any knowledge of it, or that he was bound by it, or participated in it, and on the contrary, the evidence shows he did not accept it.

The Court: This question is directed to whether he did have any conversation. [98]

Mr. Harloe: That is correct.

Mr. Doyle: We object to it as being immaterial, irrelevant and incompetent.

The Court: For the present I will permit that question subject to the objection. You can renew that objection later.

Mr. Harloe: Will you read the question?

(Question read.)

Q. Do you understand that question, Mr. Ceriat?

A. I would say no, because I am proposing the contract.

(Testimony of Eugene Ceriat.)

Q. What I am trying to get at, Mr. Ceriat, is, you suggest in this letter that Mr. Pollia proposed to do this work.

A. Well, I should say I proposed to have Pollia accept that contract.

Q. You proposed to have Pollia accept that contract? A. Yes.

Q. After you sent this letter to Flotation Systems they wrote you a letter about it, didn't they?

A. Yes.

Q. Do you remember what that letter said?

A. I believe Mr. Henry wrote me a letter and asked me to have Mr. Pollia draw a contract acceptable to him.

Q. I show you a letter here for the purpose of refreshing your memory, Mr. Ceriat. You had more than one bid from Mr. Pollia, didn't you?

A. Well, I don't remember.

Q. Do you remember whether or not he had made an offer which was not acceptable, and then he made a subsequent offer, or another offer?

A. There were two or three discussions.

The Court: The question was about an offer, and the answer referred to discussions. Do you want an answer to the question?

Mr. Harloe: Q. Do you remember whether or not there was more than one offer by Mr. Pollia?

A. No, I don't remember.

Q. You don't remember? A. No. [99]

(Testimony of Eugene Ceriat.)

Q. Do you remember writing this letter to Flotation Systems? Does that refresh your memory?

A. Yes. "We have just received another bid from Mr. Pollia, who gave us the previous bid of 89 cents per foot for laying all gasoline and water lines."

Q. Does that refresh your memory as to whether or not you had more than one bid by Mr. Pollia?

A. Well, it would probably be in one bid, but a correction on a bid.

Q. A correction on a bid?

A. I would say that, myself.

Q. After this letter you received a reply from Flotation Systems with reference to this letter, did you, Mr. Ceriat?

A. Yes.

Q. Do you remember what that reply was? Does that refresh your recollection?

A. The reply seems to be from Kalte, of the Flotation Systems. I thought it was Jim Henry that replied, because usually——

Q. Never mind about usually. I don't want the record to show what usually was done. This letter refreshes your memory, does it?

A. Yes.

Q. After you received this letter from Flotation Systems, did you again take the matter up with Mr. Pollia?

A. Well, I think Mr. Pollia and Mr. Snyder——

Q. Never mind that. Did you again negotiate with Mr. Pollia?

A. I do not think so.

(Testimony of Eugene Ceriat.)

Q. You do not think so? A. No.

Q. Not after receiving this letter?

A. I don't remember.

Q. You don't remember whether you did, or not? A. No.

Q. Now, were you present when this contract was drawn up?

A. At the final contract I was not present.

Q. At the final contract, you were not present when that was drawn up? A. No.

Mr. Harloe: If your Honor please, I will offer these two [100] letters in evidence and ask that they be admitted as defendants' exhibits next in order.

Mr. Doyle: To which the plaintiff renews the objection on the ground stated, and on the additional ground the witness' testimony, so far as these two letters are concerned, they are purely between this witness and his employer, at Los Angeles, and not in any way binding on the plaintiff, who had no knowledge of them, and did not participate in them.

The Court: For the present they may be marked for identification and we will take the legal matter up later.

(The letter from Eugene Ceriat to Flotation Systems, dated May 23, 1940, was marked "Defendants' Exhibit B for Identification.")

(The letter from F. E. Kalte, dated May 24, 1940, is marked "Defendants' Exhibit C for Identification.")

(Testimony of Eugene Ceriat.)

Mr. Harloe: That is all.

Redirect Examination

Mr. Doyle: Q. I neglected to ask you on direct examination, after Mr. Pollia commenced work on Plaintiff's Exhibit 2, which was an agreement finally exchanged on May 28, 1940, there were extra work orders issued. Were you familiar with the fact that there were extra work orders issued?

A. How do you mean?

Q. Mr. Pollia finally gave you this agreement of May 28, 1940, which is marked Plaintiff's Exhibit 2.

A. Yes.

Q. Which you approved, and which Mr. Henry O.K'd.

A. Yes.

Q. After that agreement, is it not a fact of your own knowledge, that you know, that the Flo-tation Systems issued a number of extra work orders on the job over there?

A. I think I signed one or two, myself.

Q. I see you signed one, No. 280. Did you see these extra work [101] orders as they came in, or did they come in through you, or were they given directly to Mr. Pollia?

A. The one that I signed came through me; the others did not.

Recross Examination

Mr. Harloe: Q. Mr. Ceriat, during the time of these negotiations with Mr. Pollia with reference to the work, you were the one in charge representing the Flotation Systems, weren't you?

(Testimony of Eugene Ceriat.)

A. I was supposed to be, yes.

Q. You were supposed to be the man in charge?

A. Yes.

Q. And all of these communications from Flo-tation Systems, and in answer to your letter, were addressed to you?

A. They came to the office.

Q. They came to the office addressed to you, and you were the man in charge there?

A. Well, I was the man in charge of the job, yes.

Mr. Harloe: That is all. No further questions.

Mr. Doyle: That is Plaintiff's case, your Honor.

Mr. Stark: So far as my people are concerned, I have only the presentation of one document, Mr. Harloe. You have an original letter in your file of October 29, 1940, addressed from my firm to you?

Mr. Harloe: I think I have.

Mr. Stark: You recall that that letter that you were willing to stipulate that this is a copy of it and I could use a copy?

Mr. Harloe: I think I have the original. What is the date?

Mr. Stark: October 29, 1940.

Mr. Harloe: Yes.

Mr. Stark: The intervenor wishes to offer in evidence, if your Honor please, a letter dated Oc-tober 29, 1940, addressed [102] to Mr. Harloe, by myself, representing Shanmac Company, a copart-nership, which will complete the intervenor's case.

(Testimony of Eugene Ceriat.)

(The letter of Charles M. Stark to John Harloe, dated October 29, 1940, was marked "Intervenor's Exhibit 2.")

Mr. Harloe: Mr. Stark, have you any objection to my putting in evidence my letter to you dated November 15, 1940?

Mr. Stark: No.

Mr. Harloe: Have you the original?

Mr. Stark: Yes.

Mr. Harloe: I will offer in evidence, with reference to the Intervenor case, the letter of mine to Charles M. Stark dated November 15, 1940.

The Court: It may be admitted.

(The letter was marked "Defendants' Exhibit D.")

Mr. Doyle: I do not presume that the stipulation between Mr. Stark and yourself about the items involved in the complaint in intervention in any way involves the plaintiff?

Mr. Harloe: No, that is between Mr. Stark and I.

EDWARD C. SEYMOUR,

Called for the Defendants; Sworn.

Mr. Harloe: Q. Your residence, Mr. Seymour, is what?

A. 136 North Deer Drive, Los Angeles.

Q. And your business or occupation?

(Testimony of Edward C. Seymour.)

A. Manufacturer and contractor.

Q. Of what products?

A. Of bitumen products.

Q. One of your products is the wrapping of pipe? A. Yes.

Q. Now, you are familiar with the Alameda Airport Job? A. Yes.

Q. You were there on the job at times?

A. Yes.

Q. Now, you furnished the pipe or wrappings of the pipe for that [103] job?

A. I furnished the wrapping machine and the labor and the material for wrapping the pipe.

Q. And wrapping of pipe? A. Yes.

Q. And you wrapped the pipe under inspection by the Naval authorities, did you, Mr. Seymour?

A. Yes.

Q. After you wrapped the pipe what did you do with it?

A. We stacked it in a stock pile.

Q. Did you see any of that pipe being installed in the trenches? A. No.

Q. Mr. Seymour, do you know how many feet of pipe you wrapped, approximately?

A. Well, I could not be quite sure, it would be an estimate, I would say about between 9000 and 10,000 feet.

Q. Now, then, Mr. Seymour, you saw that pipe wrapped. The specifications called for it to be wrapped in a certain manner, did they not?

(Testimony of Edward C. Seymour.)

A. Yes.

Q. And you did wrap it according to those specifications? A. Yes.

Q. Will you just give us now, briefly and quickly, what the wrapping consisted of?

A. It had to be sand blasted and then it had to be primed with a coal tar, then it had to receive two coats of coal tar enamel, and then there was a 15-pound wrapping of coal tar straight asbestos felt.

Q. What do you mean by 15-pound wrapping, is that 15 pounds per foot?

A. No, that is a description of the weight per hundred square feet. The weight of the wrapping there was known as 15 pounds per hundred square feet. After that was applied then there was a final wrapping of Craft wrapping paper.

Q. Of Craft wrapping paper?

A. Just plain wrapping paper; that would be plain paper, I guess you would call it.

Q. In the handling of the pipe, generally speaking, what part of the wrapping would become bruised so that it would have to be [104] done over again?

A. Well, all machine-wrapped pipe, after it is wrapped, of course, has to be handled carefully; otherwise, damage to the wrapping will occur. The specifications on that job, as I recall them now, specifically covered that phase, that the pipes had to be handled by the contractor doing the laying

(Testimony of Edward C. Seymour.)

in such a manner that the wrapping was not injured.

Q. Now, if in the installation of that pipe in the trenches the pipe was dragged or battered about, would that wrapping have to be replaced or could that be patched?

Mr. Doyle: Objected to as being immaterial, irrelevant, and incompetent. The witness did not see the pipe being laid in the excavation, and how could he answer that question?

Mr. Harloe: I am just asking the question.

One of your items in the bill of particulars is patching of pipe.

The Court: I will allow the question subject to the objection.

A. Under normal procedure it should not be much of a job to patch it up, if it is cracked any place, it occurs quite frequently; all pipe line contractors are familiar with that, and it should not be much of a job patching up any fractures that are made in the wrapping. In these the particular specifications the Craft paper would probably be more damaged, which was the last portion of it, than anything else, because the specifications provided that—when I say “the specifications,” I mean the Navy specifications—as I recall it provided for patching at intervals.

Q. What do you mean by that?

A. Normally we would stick the last coating of the paper tightly to the other felt wrapper, which I explained to you, and in these particular speci-

(Testimony of Edward C. Seymour.)

fications the Navy only wanted it at intervals. The principle [105] back of that was if the paper were loose the paper afforded some cleavage so that when the soil settled around it, instead of that loose layer of paper being an integral part of that coating, it was a loose wrapper, so that it would pull away when distorted the main part of the coating, or main part of the wrapping.

Q. That being so, it would take very little jar to tear part of that loose wrapping paper?

A. I would say so.

Q. Now, what would be the cost of replacing that last wrapping paper which you say was loose, as compared to the other factors going into the wrapping?

Mr. Doyle: Objected to as being immaterial, irrelevant, and incompetent. The second objection is that what the actual coat would be is not before the Court, because of the fact that there was a special order executed between the plaintiff and the defendant.

The Court: He may answer subject to the objection.

A. You mean what would be the cost of labor and material in replacing that?

Mr. Harloe: Q. No, just the outer paper.

A. It would be very small. Do you want me to guess at that approximate figure it might cost?

Q. I will withdraw that question and put it this way: The cost of the replacing or patching the

(Testimony of Edward C. Seymour.)

outer paper is a very nominal one, as compared with the wrapping? A. Very nominal.

Mr. Harloe: That is all.

Mr. Doyle: No questions.

The Court: We will take an adjournment now until tomorrow at 10:00 o'clock a. m.

(Adjournment to tomorrow, Wednesday, February 18, 1942, at 10:00 o'clock a. m.) [106]

Wednesday, February 18, 1942

10:00 o'Clock A.M.

The Court: You may proceed.

ARTHUR F. SNYDER,

Called for the Defendants; Sworn.

Mr. Harloe: Q. Mr. Snyder, what is your residence?

A. 5214 California street, San Francisco.

Q. You are in the employ of the Flotation Systems, Inc.? A. Yes.

Q. And have been for how long?

A. Since March, 1940.

Q. You were in their employ and on the job at the Alameda Airport?

A. Yes, during the entire time that the contract was in progress, under construction.

Q. When the work was under progress?

A. Yes.

(Testimony of Arthur F. Snyder.)

Q. Mr. Snyder, Plaintiff's Exhibit 2 in evidence is the contract on the letterhead of Andrew A. Pollia. I ask you to examine that. A. Yes.

Q. Did you actually type this contract?

A. Yes, I am quite sure that I did.

Q. You are quite sure that you typed the contract. At that time were you in charge of the work for the Flotation Systems? A. No, I was not.

Q. Who was? A. Mr. Eugene Ceriat.

Q. What was your official position at that time?

A. My official position was, that is, I was carried on the company's payroll as an engineer. However, that was at a time when I had just started employment with the Flotation Systems, I had just been employed for a month, or two months, and my duties were largely clerical at that time, because I was learning that [107] particular part of the business, you understand.

Q. At the time that this contract was drawn up, your actual duties at that time were practically clerical? A. That is right, yes.

Q. Now, with reference to the provisions of this contract with respect to the details of the different items, where did you obtain the information for the purpose of drawing up this contract?

A. Mr. Pollia brought a contract that he had written, himself, a proposed unsigned contract, and it was from that contract that we arrived at certain provisions.

Q. I show you Plaintiff's Exhibit No. 1 for Identification.

(Testimony of Arthur F. Snyder.)

A. Yes, I believe, I am quite sure that is the document from which the actual contract was drafted, after certain revisions were made.

Q. Did you have any negotiations with Mr. Pollia prior to the time that you received this draft of a contract from him, with reference to what should or should not be in the contract?

A. No, not at all.

Q. Do you remember who did for your company?

A. Yes, Mr. Ceriat and Mr. Pollia had been in conference with each other, and had had considerable discussion about the doing of the work.

Q. And from that discussion, then, you received this form of contract, Plaintiff's Exhibit 1 for Identification?

A. That is right.

Q. Did you have anything to do with the changes from this draft to the contract that was drawn up?

A. Yes. As I recall, the three of us, Mr. Ceriat, Mr. Pollia, and myself, discussed the original contract, and as I recall the wording, the actual wording of the original, that is, Exhibit No. 1, did not suit me, and I suggested some revisions in the wording to make it [108] read better.

Q. Make it read better?

A. Yes.

Q. After this contract, Plaintiff's Exhibit No. 2, was drawn, did you have anything to do with transmitting it to the head office at Los Angeles for signature by Flotation Systems?

(Testimony of Arthur F. Snyder.)

A. Yes. I typed Mr. Ceriat's letter of submission and sent it down, mailed it.

Q. Mailed it? A. Yes.

Q. Now, this contract was received, and Mr. Pollia commenced the operations called for under the contract?

A. Yes, very soon, either the day before or that day.

Q. Were you there continually from the commencement of the work by Mr. Pollia until the completion of the contract? A. I was.

Q. You were there every day?

A. Well, possibly I might not have worked on some Sundays, or Saturday afternoon I might not have been there.

Q. But most of the time, practically all of the time you were there? A. Yes.

Q. You saw Mr. Pollia doing this work?

A. Yes. I was there practically every bit of the time that his men were on the job.

Q. When was the first time, if you remember, that changes were made by the Navy authorities in charge for the doing of the work?

A. I don't remember the exact date, but it was probably soon after the start of the work; there were a great many changes involved in the job; the Navy changed the specifications, that is, their design on some of the pipe work, quite frequently, and all during the job there were additional work change orders from the Navy.

Q. I might start at the first change order that

(Testimony of Arthur F. Snyder.)

was received by you from the Navy; necessarily, you acquainted Mr. Pollia [109] with that change, did you not?

A. That is right, it was necessary to do so, because we had to revise our own plans and see that the work was done in accordance with the changes that were made.

Q. What did Mr. Pollia do, if anything, with reference to those changes?

A. Well, if the changes involved no additional work he did nothing but if the changes involved additional work, inside of the pits or elsewhere, he immediately demanded an order authorizing him to do this extra work not included in his contract.

Q. That was perfectly proper for him to do, with extra work, was it, Mr. Snyder?

A. Yes, it was, because at that time a number of these changes did involve extra work. Mr. Pollia made his original estimate from the original plans and specifications, and, naturally, if subsequent changes in the specifications involved more work he was entitled to extra pay for such extra work.

Q. I show you here Plaintiff's Exhibits No. 3 and No. 4, Order 273 and Order 274, and ask you to look at those and see if you know what they are.

A. Yes, these are in my handwriting. These are signed by Mr. Kalte. These are both orders for work to be done in certain fueling pits at the end of the gasoline line.

'(Testimony of Arthur F. Snyder.)

Q. Were these fueling pits which these work orders cover in the original contract?

A. There was no mention made of these fueling pits in the original contract, no.

Q. The original contract called for pits A, B, C, D, and E. A. That is right.

Q. Now, in these work orders that I have just shown you, are those pits designated?

A. No, those are pits F.

Q. And these Orders 273 and 274 apply to work to be done in [110] pit F? A. That is right.

Q. And were not in the original contract?

A. That is right.

Q. And were necessarily extra?

A. That is right.

Q. You are familiar with these plans and specifications, are you, Mr. Snyder?

A. Yes, I was familiar with them.

Q. Do these plans and specifications show fittings to be installed in the pit?

A. This one sheet of the plans shows the layout of the pipe, and the other shows the detail of the fittings in the pits.

Q. In those pits the Aqua people were to install certain patent valves?

A. They were to install and did install certain patent valves in the pits.

Q. Approximately what amount of the fittings and installation in the pits was done by the Aqua people, what percentage would that be?

(Testimony of Arthur F. Snyder.)

A. Of course, it was be a little bit difficult, as you know, to say by way of money value what it is, but, generally speaking, I would say 50 per cent. of the equipment in the pits was Aqua patent equipment, 40 to 50 per cent.

Q. And the other 50 or 60 per cent. of the fittings that went into the pits, were they known, commonly known as standard fittings and pipe?

A. Absolutely, you can find them all in any pipe supply catalog.

Q. While you were on the job did you give Mr. Pollia any extra order, or any order, for the installation of those fittings in the pits? A. No.

Q. I am speaking now, and you are referring to those shown in the plans and specifications?

A. That is right.

Q. Whenever any change was made by the Navy Department for the installation of those fittings in the pits, you did give Mr. Pollia a work order?

A. That is correct, whenever anything [111] came up, any work not covered by the original plans and specifications, we did give orders covering that extra work involved by the changes involved.

Q. Did Mr. Pollia install any fittings in the pits before any change took place?

A. You mean before any of these changes from the Navy took place?

Q. Yes.

A. I am reasonably sure that he did. Of course, the time element is a little bit difficult to recall.

Q. Well, let me put it this way: Was there ever

(Testimony of Arthur F. Snyder.)

any question raised by Mr. Pollia with you that he was not to install these standard fittings in the pits?

A. No, there was never any question raised during the first, let us say at least not during the first month of construction.

Q. Approximately what percentage of fittings in the pits had Mr. Pollia installed before he raised any question as to whether that was contained in his contract, or not?

A. Roughly speaking, I would estimate 80 per cent, that is, fittings in addition to those installed by the Aqua Company.

Q. That is what I mean, all my questions are along the line that those were fittings that the Aqua Company were to install.

A. That is right.

Q. Those fittings were a patented article of their own make?

A. Yes, and they had an employee right on the job.

Q. And his name was Mr. Johnson?

A. That is right, O. H. Johnson.

Q. When was the first time that you knew that Mr. Pollia claimed that the installation of these fittings in the pits was not in his contract?

A. When Mr. Pollia submitted a bill at the field office at Alameda to Mr. Kalte, and we saw that he had listed on this bill itemized charges for work installing all [112] of these fittings in the pits, that is the first knowledge that I had that it was his intention to charge us for those fittings in the pits.

(Testimony of Arthur F. Snyder.)

Q. That bill was for fittings already installed, was it? A. Yes.

Q. Did he request from you any work order for the installation in those pits for which that bill was presented prior to the date of that statement?

A. Absolutely not, only for the changes that the Navy had made.

Q. Now, Mr. Snyder, you have seen the bill of particulars filed in this matter by Mr. Pollia?

A. Yes, I have.

Q. I gave you a copy of it.

A. At one time I had a copy of it. I do not believe I have a copy in my possession right now.

Q. I will give you another one. Have you a copy there, Mr. Doyle?

Mr. Doyle: Yes, I have a copy.

Mr. Harloe: Q. I hand you now what is a copy of the bill of particulars filed in this matter, and ask you to examine it, Mr. Snyder.

A. Yes.

Q. Now, after receiving that bill of particulars did you compile the data of the work that was done, and how it was done, with reference to that bill of particulars? A. I did.

Q. You compiled it, yourself?

A. Yes. I kept a rather complete record of all the transactions with regard to Mr. Pollia's contract, and from my record I compiled a complete record of things on each of these items that are on this bill of particulars.

(Testimony of Arthur F. Snyder.)

Q. I call your attention to the first item on the bill of particulars, "Extra—Wrapping joints and fittings as per agreement \$663.60." Is that item correct?

A. Not quite according to my records. You might say substantially correct, but not quite. If I may refer to my records, I will. [113]

Q. These are the records that you compiled, yourself?

A. That is right. At one time on the job, I don't remember exactly when, Mr. Pollia and myself went over the plans, and we made notations regarding the number of joints that were wrapped, and from my records, extending them at the unit prices shown in the contract of Mr. Pollia, as I show it it is \$657.67, instead of \$663.60, just a minor difference there.

Q. Take the next item, "Welding joints."

A. I have nothing in my record to indicate why that should be charged for welding any joints, other than those covered by extra orders in subsequent items on this bill of particulars, as it was our understanding, and I believe it is plainly stated in the contract, that the laying of pipe and installing of pipe and fittings, etc., included the welding of the same. So, with regard to this item for welding joints, we have no knowledge of what that might constitute, or why that should be charged.

Q. In other words, in the first item, No. 1 of the contract, there is a clause, "Welding and testing all joints"?

(Testimony of Arthur F. Snyder.)

A. That is right, that is included in the contract. There were extra joints that were welded which are covered by subsequent items on this bill of particulars.

Q. Now, the next item is, "Rental of crane \$8 per hour, \$164."

A. My record shows that that crane was used 201½ hours, and it was my understanding with Mr. Pollia, and I do not believe I have a written agreement to that effect, but it was understood at the time that the rental of the crane was \$7 an hour, and not \$8.

Q. \$7 and not \$8?

A. Yes. Other than that, the item is substantially correct.

Q. Instead of \$164, it should be \$143.50?

A. That is correct, [114] according to my records.

Q. The next item is, "Rental of crane, \$404."

A. The same thing applies to that.

Q. How many hours does it show for this rental from your records?

A. The bill of particulars did not state the number of hours, but my records show 501½, which we have calculated at \$7 an hour, the extension of which was \$353.50. It shows \$404 on the bill of particulars.

Q. The next item on the bill of particulars is "Patch pipe wrapping, July and August, \$1760." While you were on the job you necessarily saw the

(Testimony of Arthur F. Snyder.)

work that was going on, and the necessity of installing the pipe in the trenches? A. Yes.

Q. The contract provided that the Flotation Systems would furnish the material, most of it?

A. Yes.

Q. Practically all of it. And one of the provisions was that the Flotation Systems, itself, would wrap the pipe, or cause it to be wrapped?

A. I do not know whether there is anything that states that, but it was definitely understood by all parties that we would furnish the pipe wrapping.

Q. Furnish the pipe wrapping? A. Yes.

Q. You were there on the job and saw the pipe wrapping, did you? A. Yes, I did.

Q. Who wrapped the pipe?

A. Well, the Non-corrosive Products Company, of Huntington Park, wrapped it all under the supervision of Mr. Edward Seymour.

Q. Was all of the pipe furnished by the Flotation Systems under and pursuant to the contract wrapped by the Non-corrosive Products Company?

A. All except 120 feet of 4-inch pipe; we ran short of 4-inch pipe and I had to buy 120 feet locally, which was wrapped by Mr. Pollia. [115]

Q. And all of the other pipe, other than the 120 feet, was wrapped by the Non-corrosive Products Company?

A. Yes, all but 120 feet was wrapped by them.

Q. That came in a wrapped condition?

A. In a wrapped condition, and was carefully

(Testimony of Arthur F. Snyder.)

stacked in a stock pile at a central location on the job.

Q. Now, during any time that you were on the job, did Mr. Pollia request from you any order for wrapping any pipe other than the 120 feet that you spoke about?

A. Yes, at one time he did. He claimed at one time that he had found a few spots on this pipe—there was approximately 10,000 feet of pipe, and he found a few spots which had to be rewrapped. He said at the time that the paper had come off by the time he got the pipe to the trench.

Q. Let me understand you. You mean the outer coating of paper had been dislodged or bruised and it was necessary to wrap that?

A. As I recall it, yes. That was the only part of it wrapped, that was damaged, so that Mr. Pollia contended that it was not properly supplied by the Non-corrosive Products Company.

Q. Was there any time during the installation of this pipe by Mr. Pollia that any claim was made by him or that he called your attention to the fact that the wrapping of the—the felt wrapping and tar paper had been dislodged so that it had to be rewrapped?

A. Not that I recall. The only thing I can recall is his calling my attention to the condition of the paper on the outside of the pipe.

Q. Take the next item, "Patch pipe wrapping in September." Would that next item be the same

(Testimony of Arthur F. Snyder.)

as the item just before it in the bill of particulars?

A. Yes.

Q. Now, going back to this 120 feet of extra pipe that you had [116] to purchase and wrap, did Mr. Pollia, himself, wrap that pipe, or did he have it wrapped?

A. He engaged the A. R. Reid Company, of San Francisco, to come over and wrap it.

Q. You saw A. R. Reid Company on the job wrapping the pipe? A. Yes.

Q. Do you know what the cost of wrapping that 120 feet of pipe was?

A. I believe I have a notation on it, here—No, I do not have a segregation of that particular item. I did have this information.

Q. Let me ask you this question, do you know whether or not the Flotation Systems paid A. R. Reid Company directly for this work that they did for Pollia?

A. Yes, they did, because A. R. Reid Company requested us to pay them and deduct it from the money that was owing Mr. Pollia.

Q. And pursuant to the authority that I told you I had received from Mr. Theodore Tamba, who was representing Mr. Pollia at that time, you paid that bill? A. I requested them to pay it.

Q. It was paid, in the sum of \$870.52?

A. \$887.52.

Q. That is correct. A. Yes.

Q. Now, the next item is "Wrapping pipe, \$36." That is Extra No. 7, you have it marked there.

(Testimony of Arthur F. Snyder.)

A. That item is correct.

Q. What was that for?

A. That was for the 120 feet of 4-inch pipe that I mentioned previously.

Q. The next item of the bill of particulars is, "Distributing gasoline and water piping, \$375." Do you know what that is, or what it represented?

A. No, I do not understand why the company should be billed for that. The water pipe, which was cast iron pipe, was brought in by a trucking concern, which consented to lay the pipe, drop it, unload it at the side of the trench, right along where the trench was, or was to be dug, so nobody, Mr. Pollia nor anybody else, had to move that pipe; it [117] was laid right along the trench.

Q. They did have to move it to put in the trench?

A. But there was no distribution involved. The gasoline pipe, as I said before, was received from a railroad car, and was unloaded, and was wrapped by the Non-corrosive Products Company, and they, in turn, stacked it in a stock pile at a very central location on the job. I do not believe it could have been stacked at a place more convenient for a sub-contractor to use it.

Q. Let me ask you this question, Mr. Snyder, with reference to that item: Did Mr. Pollia at any time raise any question that he was not supposed to distribute that pipe from the place it was stacked by the Non-Corrosive Company?

A. No, I do not recall that he ever did.

(Testimony of Arthur F. Snyder.)

Q. Did he ever request an order from you to do that? A. No.

Q. Now, the next item is, "Installing temporary water line for testing," in the sum of \$275.

A. I have nothing in my records on that item, at all. I have no record of having issued any order for any such testing line, and I believe you will find that our contract with Mr. Pollia states that he is to do the testing at his expense, and we had no knowledge why there should be a charge for testing.

Q. In other words, the testing and welding of all joints and connections to the pit boxes A, B, C, D, and E, could the joints be tested separate from the pipe line, itself, Mr. Snyder?

A. Not very well, no.

Q. In other words, after the line was laid, in order to test the joints it would be necessary to fill that entire line for the purpose of testing the joints, to see whether there was leakage, or not?

A. That is the only way I know of testing.

Q. For that item, "Installing temporary water line for testing" [118] did Mr. Pollia request an order from you? A. I have no record of it.

Q. Have you any recollection that he made a request to do that? A. None, whatever.

Q. The next item is, "Making test caps, \$48."

A. Well, the same thing applies to that. We understood that the contract included testing, and, as I recall, any material that Mr. Pollia wanted we always supplied. He called on us on numerous

(Testimony of Arthur F. Snyder.)

occasions. I made special trips over to Oakland for material at his request, at such times as he stated he was ready to test pipe lines and needed certain material.

Q. When he made these test caps, was there anything said by him to you relative to getting test caps for him?

A. No, the testing was entirely up to him, as a part of his contract.

The Court: When you are speaking of testing, was that to satisfy your contract, that they were in accordance with the contract?

A. Well, more particularly, your Honor, to satisfy the Navy inspectors.

Q. The Navy inspectors were to be satisfied?

A. It was required, and, of course, we wanted a satisfactory job done, too, but primarily the testing had to be done to satisfy the Navy inspectors.

Q. That is what I wanted to find out, who had to be satisfied. A. Yes.

Mr. Harloe: Q. Your contract with the Government provided that this work would pass inspection by the Naval authorities?

A. Yes.

Q. As a matter of fact, it provided that it would be done under the supervision of and to the satisfaction of the supervising engineer of the Navy, there, did it not?

A. Yes, definitely. [119]

Q. The next item is, "Cutting and fitting water pipe."

(Testimony of Arthur F. Snyder.)

A. Well, in installing water pipes and in installing any water system, naturally the pipe must be cut and fitted. I am unable to understand why this item should be included in this bill of particulars, because I do not understand how anybody could take a contract to install a water pipe line anywhere without the same cutting and fitting of pipe.

Q. The necessity for cutting and fitting pipe is to make the length of pipe conform with the segregation that is called for, is it not?

A. That is right.

Q. In other words, Mr. Snyder, pipe is of standard length?

A. Standard length, or random lengths.

Q. And it is necessary in installing a water line, in order to make it comply with a certain requisite number of fittings, to cut some pipe to fit?

A. Yes. Naturally, the pipe had to be cut to the requisite length necessary to fit between Pits A and B, as you might see on the plans.

Q. The next item is, "Use of civil engineer, \$25."

A. Well, that item is correct, except in regard to the amount. Mr. Pollia had a civil engineer on the job, or a transit man, as he classified him, doing some survey work in regard to the grading of the line, and we borrowed the services of this man on one occasion that I remember. The only thing I have on that is a pencil notation I made at one time, I asked Mr. Pollia how much we owed him in return for allowing us to use the services of his

(Testimony of Arthur F. Snyder.)

transit man, and he told me \$4.35, as opposed to the \$25 on the bill of particulars.

Q. The next item is, "Order 1215," that has been put in evidence in this matter.

A. Order 1215 is the item on the bill of particulars.

Q. I will show you this order, this is Plaintiff's Exhibit No. 7. [120]

A. Yes, I wrote this order.

Q. You wrote that order, yourself, did you?

A. Yes.

Q. Now, that Order 1215 is correct, is it?

A. Yes, the order is correct, but the amount on the bill of particulars, \$241, should be \$242. There was an error in computing the actual amount of that bill. It should be \$242 instead of \$241.

Mr. Harloe: May I make that notation right on the bill of particulars?

Mr. Doyle: No. I do not think you should make any notation on there, because the witness is testifying.

Mr. Harloe: It should be \$242.

Mr. Doyle: In other words, your records show that order 1215 as charged for in the bill of particulars, \$241, should be \$242?

A. That is right. It was authorized and was done and the charge of \$242 is correct.

Mr. Harloe: Q. Now, Order No. 273, \$770. There is no specification or mention of order 274 in the bill of particulars, and I want to ask you relative to that work, Mr. Snyder. We have Order

(Testimony of Arthur F. Snyder.)

273 in the bill of particulars. Look at Orders 273 and 274, as I am going to ask you this question: Were they not considered practically the same order?

A. They are consecutively numbered, and they were issued at the same time, the difference being—this is rather a technical point, but they applied to two different contracts of ours. We had an additional contract over there for installing some equipment in some additional pits. 273 was on our original contract, and 274 covered the order on the subsequent contract we obtained from the Navy.

Q. The amount in the bill of particulars, Order 273, \$770, that contemplates both 273 and 274, does it not?

A. No, it does [121] not. Our Order No. 273 calls for the installation of equipment in 10 fueling pits, and specifies \$77 per pit, which makes \$770, which would be correct if Mr. Pollia had done all of the work in those ten pits. The hose reels, which are part of the equipment which is put in these pits, was not available.

Q. What do you mean by "hose reel"?

A. The equipment to be installed in these pits, and as covered by these orders, included certain standard pipe fittings, elbows, flanges, valves, and so on, and in addition we had a patent valve, a special valve to gasoline meters, and two hose reels, the hose reel being a device by which gasoline hose was reeled up on a mechanical reel for holding the hose.

(Testimony of Arthur F. Snyder.)

Q. Those were not installed by Mr. Pollia?

A. No.

Q. Through no fault of his, though, was it?

A. No, through no fault of his; they were not available at the time he did the other work in the pit.

Q. And subsequently the installation of those hose reels was done by the Flotation Systems, and not by Mr. Pollia? A. It was.

Q. Now, you made a note there of the amount of deduction that should have been made in the \$770 by reason of the non-installation of hose reels by Pollia, did you?

A. I kept a record of the cost that Flotation Systems was put to in putting in those hose reels, and on the basis of that cost I estimated that a fair charge for putting in those hose reels would be \$10 per reel. There were two hose reels in each pit, that would be \$20 per pit, and therefore a deduction of \$200, which would bring the amount to \$570, instead \$770.

Q. Order No. 280, \$165, that was for extra, wasn't that, Mr. Snyder? A. Yes.

Q. That is entirely correct?

A. Order No. 280? [122]

Q. I will give it you, Plaintiff's Exhibit No. 5.

A. Yes. That was a change made in the plans and specifications by the Navy, which involved some extra cast iron pipe line which Mr. Pollia installed. The item is entirely correct.

(Testimony of Arthur F. Snyder.)

Q. Now, Order 1207, \$208, is in the same situation, is it not?

A. That I have not any record of, I do not just recall it.

Q. I will show you the order and it may refresh your memory, it is Plaintiff's Exhibit No. 7.

A. Yes, Mr. Pollia did that work, and it is entirely correct, \$208.

Q. The next item on the bill of particulars is a letter dated August 23, 1940, \$4903.20. Did you, from your records that you kept, make a detailed account and statement of the work done in the pits which you claimed were not in the original contract?

A. Yes, I kept a detailed record of all work, of all changes from the original plans and specifications, and all additional work that was caused by such changes.

Q. Now, then, what does your record show relative to the installation in the pits, other than those called for by the original plans and specifications?

A. I have that in some detail here in my records; shall I read it item by item?

Q. Yes, go right ahead.

A. In what was designated as A Pit, there were additional 6-inch flanged joints put in, not shown by the original plans. On the basis of the order issued to Mr. Pollia, he is entitled to \$3.75. In the B Pit, one 6-inch bench weld at 88 cents, 2 4-inch bench welds at 63 cents, a total of \$1.26; 2 6-inch field welds at \$3.60 each, a total of \$7.20. Now, in

(Testimony of Arthur F. Snyder.)

the C Pit, there were 16 of those pits, there were 48 additional 4-inch bench welds at 63 cents each, or a total of \$30.24. The majority of the changes were in the D Pit. There [123] were eight of these pits. There were 32 additional 4-inch flange connections in these pits, which at \$2.50 each would be \$80. There were 40 4-inch bench welds to be made at 63 cents each, which comes to \$25.20. There were 16 4-inch bench welds at 88 cents each, which comes to \$14.08; 8 4-inch field welds at \$3.60, which comes to \$28.80, and 8 4-inch field welds at \$1.75, which comes to \$14. Now, then, in addition to that, in order to put this equipment on the tank and the openings in the tanks were not properly fitted for this patent equipment, it was necessary to do some welding on some nipples that were to go into these tanks, which Mr. Pollia did for us.

Q. You gave him an order for each of them?

A. Yes.

Q. That was considered extra?

A. That was considered extra, and is covered by one of these orders which authorizes him to do such extra work as authorized by us at such and such a unit price. Now, the amount on welding flanges for the storage tanks, 32 6-inch bench welds at 88 cents each, a total of \$128.16, 32 8-inch at \$1.13, total of \$36.15.

Q. That totals up \$269.73?

A. I do not have the total before me.

Q. These detailed amounts that you have just given us do not include the regular fittings, stand-

(Testimony of Arthur F. Snyder.)

ard fittings that show on the plans, and fittings which Mr. Pollia did place in the pits?

A. They do not show the fittings in the pits as indicated by the original plans, because it does not include the fittings as shown by the original plans which have been submitted to the Court.

Q. Now, with respect to the bill of particulars, the bill of particulars shows one payment of \$7600, a second payment of \$4737.49, payroll advanced \$1544 on account of payment due 9/10/40 \$1000, and omissions for tile drain \$2300. The tile [124] drain was a change made by the Navy authorities, and was omitted? A. That is right.

Q. Who did agree upon the amount that would be credited the Flotation Systems for the amount of this tile drain?

A. I believe it is covered in the original contract that if the tile drain is to be omitted that the contract will be reduced by that amount. In addition, we gave him an order authorizing him to omit that; then we gave him a letter signed by both Mr. Pollia and ourselves—I have a copy of it somewhere—

Q. In any event, there is no question but what that figure of \$2300 for the omission of the tile drain is correct?

A. No, there is no question about that particular item. There is about one of the other items, however.

Mr. Harloe: So that there will be no question about it, Mr. Doyle, I have been going over the items in

(Testimony of Arthur F. Snyder.)

the bill of particulars, and you have set forth a credit from the plaintiff as to the tile drain of \$2300.

Mr. Doyle: Yes.

Mr. Harloe: So that this may be in the record, these figures that I have given, there, payment No. 1, payment No. 2, payroll advanced, on account of payment due 9/10/40, and omission for tile drain, make the total of \$17,191.49, which the bill of particulars gives the company credit for.

Mr. Doyle: Yes.

Mr. Harloe: Now, payroll advances, which are shown at \$1544, what should that be, from your records? A. \$1634.55.

Q. That is shown by your records?

A. Yes.

Q. And that would make the total \$17,274.04, instead of \$17,191.49.

A. My mental arithmetic is not good enough to follow you. [125]

Q. That is a question of addition and subtraction.

The Court: I think this is a good time to take our recess of ten minutes.

(After recess:)

Mr. Harloe: Q. Mr. Snyder, at one time during the course of construction of this project there was a meeting held with the Commander of the United States Navy? A. Yes.

(Testimony of Arthur F. Snyder.)

Q. Do you remember approximately about what time that was?

Mr. Doyle: Just for the purpose of refreshing his memory, give him the date but do not give him the letter.

Mr. Harloe: Q. There was a letter written by Flotation Systems to Commander Siebert on the 17th of September, 1940. Does that refresh your memory with respect to that meeting?

A. Yes.

Q. Was that meeting held with reference to a dispute as to what work should be done, or was it held by reason of the fact that there was labor trouble?

A. It was held by reason of the fact that on the job, we were under a penalty with the Navy, and were unable to proceed on the job because of labor trouble.

Q. That letter was written and the meeting was held with Commander Siebert for the purpose of getting away from any penalty that might be imposed by reason of delay on the job?

Mr. Doyle: I object to the question as leading.

Mr. Harloe: Q. What was the reason of that meeting, Mr. Snyder? I withdraw the question and will put it this way: What gave rise to that meeting, and how was it brought about? Tell us about it.

A. Commander Siebert was in charge of the entire project, there, and the letter was written and the meeting was held as a last resort on our part,

(Testimony of Arthur F. Snyder.)

in an attempt to have some way to proceed with the work and to avoid further penalty [126] upon us. In other words, we thought that possibly we could get Commander Siebert to exert his influence to help us in this situation, where we were at a standstill.

Q. Was the standstill of the work, work that Mr. Pollia was doing?

Mr. Doyle: Objected to as leading and suggestive.

Mr. Harloe: Q. What work was stopped?

A. Mr. Pollia's work, the pipe-fitting work, he still had considerable pipe-fitting work to be done, the majority was done, but it was not completed, and we were unable to complete the pipe fitting work.

Q. Why?

A. Because Mr. Pollia did not have sufficient men on the job to do it, as we were getting nowhere, and there was no possible progress, and we were unable to hire pipe-fitters of our own, for the reason that the Central Labor Council, in Alameda County, refused to clear pipe fitters and pipe fitters' helpers to us as long as there was a dispute existing between our sub-contractor and ourselves.

Q. Had a dispute arisen between you and Mr. Pollia at that time?

A. Well, at that time this question had come up, Mr. Pollia had presented his bill for doing all of the work inside of the pits two weeks prior to

(Testimony of Arthur F. Snyder.)

that, we had not paid him for this, because we did not think he was entitled to it, and, therefore, there was a dispute.

Q. There was a dispute, and by reason of that dispute work had stopped?

A. Very nearly so.

Q. Then what did Flotation do?

A. We attempted to continue the work, we attempted to hire men through the Pipefitters and Steamfitters Local Union in Oakland to complete the work, ourselves.

Q. And being unable to do this, this meeting took place with Commander Siebert?

A. Yes, as a last resort. [127]

Q. The meeting with Commander Siebert was held only by reason of labor disputes?

A. Yes—it was held only because we were unable to proceed with the work and we were under penalty.

Q. These orders, most of them are in your handwriting, are they not?

A. Yes, most of them are.

Q. In these orders that were given to Mr. Pollia for the doing of extra work by him in the pit, the prices set forth in these orders were agreed upon between you and Mr. Pollia, were they not?

A. After a great deal of argument they were agreed upon; the Flotation Systems agreed to them because there was so little work to be done; we felt the price was exorbitant, but inasmuch as Mr. Pol-

(Testimony of Arthur F. Snyder.)

lia was on the job, and as we thought at that time these orders only covered minor changes as made by the Navy, we felt that we could stand these high prices for the limited amount of work that had to be done.

Q. Would you, as engineer in charge of the work, have agreed to all of the work in the pits at those prices? A. Absolutely not.

Mr. Doyle: Objected to as immaterial, irrelevant, and incompetent, entirely speculative.

The Court: I will let it stand.

Mr. Harloe: That is all.

Cross-Examination

Mr. Doyle: Q. Mr. Snyder, how long had you been at the Base before there was any agreement reduced to writing, either on May 27th or May 28th, 1940?

A. As I recall, I came on the Base on March 15; that would be two months and a half, wouldn't it?

Q. Approximately. Had you seen during your time at the Base these plans and specifications?

A. Yes.

Q. I understood you to testify before that you were very familiar with them.

A. Yes, I should be. I did considerable draft-
[128] ing and taking care of all of the revisions of the plans and changes, and so on.

Q. I do not want to hold you down, but you qualified your answer by saying you should be. As

(Testimony of Arthur F. Snyder.)

a matter of fact, you were very familiar with the plans and specifications, were you not?

A. Yes.

Q. You were right over at the Base prior to the time you ever saw Mr. Pollia around there, if you knew him by that name before?

A. Yes.

Q. You were under Mr. Ceriat?

A. Yes.

Q. Now, were you present at each time you ever heard, or did you ever participate in any conversation between Mr. Ceriat and Mr. Pollia with reference to the work, and to the letters of May 27th and 28th, Plaintiff's Exhibits 1 and 2?

A. Not until the time that I typed up the contract agreement.

Q. Now, the plans and specifications, that you were very familiar with, required your employer, the general contractor, to meet all the requisites that the Navy authorities incorporated in that contract, and anything they wanted done, isn't that correct?

A. That is correct.

Q. When you and Mr. Pollia, and I believe you testified Mr. Ceriat got together on May 28th, did you read the letter that Mr. Pollia had submitted, which was dated May 27, 1940?

A. Yes.

Q. You are a college graduate, I presume?

A. Yes.

Q. From what institution?

A. The University of California, 1933.

Q. And what did you get a degree in?

A. Electrical Engineering.

(Testimony of Arthur F. Snyder.)

Q. The agreement that Mr. Pollia submitted, Plaintiff's Exhibit 1, among other things, contained the following: "Including connections to the following number of pit boxes." And when you prepared this agreement, Plaintiff's Exhibit 2, the words, [129] "All connections to pit boxes"?

A. Yes.

Q. Do you recall going over that matter in connection with the plans and specifications?

A. No, I am quite sure we did not.

Q. There was some reference yesterday about a letter that Mr. Ceriat had written to Los Angeles, in which there was work discussed between Mr. Pollia and Mr. Ceriat on the job, over there, and that Mr. Pollia was not agreeable to the outline of the work set forth by Mr. Ceriat. Did you hear that testimony yesterday?

A. I heard the testimony, yes.

Q. Then you knew that there was some question in somebody else's mind about either the letter of May 27 or May 28?

A. I might say that I knew it yesterday, but I did not know it on May 28th, that there was.

Q. Then, as I understand it, on May 28, 1940, there was no question, at all, in anybody's mind but you knew all about the language "to the pit boxes"?

Mr. Harloe: Just a minute, I object to the question whether there was any question in anybody's mind.

Mr. Doyle: The question is, so far as he knew.

(Testimony of Arthur F. Snyder.)

A. No, there was no question about the interpretation of the contract at that time.

Q. Then you did know of your own knowledge that this contract of May 28, 1940, Plaintiff's Exhibit 2, was sent to your Los Angeles office, and in the ordinary course of business it came back?

A. Yes.

Q. And everything proceeded harmoniously between Mr. Pollia and the Flotation people up to a certain point, is that right?

A. No, everything at no time proceeded harmoniously on the job.

Q. Let me put the question this way, as long as you state things never progressed harmoniously on the job, did you ever have [130] occasion to check back through the records that you were maintaining as to the agreement between Mr. Pollia and Flotation Systems?

A. I had no occasion to check back on the wording of the contract, if that is what you mean.

Q. I will go further than that, did you ever have occasion to check your file at the office over there, or run through it?

A. No, not my file. The point of contention always involved changes that were brought up by the Navy, and as to who was to do the extra work that was involved by the different changes, and how much was to be paid for them.

Q. That was the reason for lack of harmony?

A. That was the reason for continual lack of harmony.

(Testimony of Arthur F. Snyder.)

Q. But outside of your answer just given, there was no lack of harmony, or any bickering, or suggestion of difference of opinion as to the wording of the contract of May 28th, 1940, until at quite some later date?

A. No, there was nothing ever came up regarding the wording of the contract until such time as we were presented with a bill wherein the work in the pits was listed in detail on the bill.

Q. Can you tell us approximately about when that was?

A. If my memory serves me right, that bill was submitted to us on August 29.

Q. 1940? A. 1940, yes.

Q. And that is the document that you itemized the night that Mrs. Snyder and yourself and Mr. Pollia were at your office?

A. About that time, yes. We did not itemize that document. We took an inventory of all work that Mr. Pollia had done on the job, it was not an itemization.

Q. For approximate purposes, it was about that time? A. It was about that time [131]

Q. When Mr. Pollia came over there to get an advance and you prepared this document, whatever it was, and he went down to Los Angeles?

A. Yes.

Q. And then is when the question arose?

A. Yes.

Q. And you think that was in the latter part of August, 1940? A. I think it was.

(Testimony of Arthur F. Snyder.)

Q. Now, I am not trying to hold you down, Mr. Snyder, but do you feel rather certain about the fact it was the latter part of August, 1940?

A. Well, that was two years ago, Mr. Doyle.

Q. That is the reason I asked the question.

A. I base my memory on going through my files, and I believe that the bill in question, as I recall, was submitted on August 29th.

Q. Thank you. Now, when was the first time that you knew there was any litigation as a result of this difference of opinion?

A. It was about the time that the suit was filed, I do not recall the date.

Q. All right, sir. And I presume that your superiors had discussed this difference of opinion, so-called, between yourself and Mr. Pollia, from August 29, 1940 until the time that the suit was filed?

Mr. Harloe: I think he should be asked whether he knew anything about it, or not.

Mr. Doyle: I will reframe the question.

The Court: Yes.

Mr. Doyle: Q. From August 29, 1940, it is a fact that there were some discussions with your superiors about this so-called difference of opinion?

A. Yes, at various times.

Q. Now, is it a fact that your superiors at any time told you that a suit had been filed in this matter?

A. No, I believe our attorney told me, I am not positive. [132]

Q. And your attorney subsequently obtained and

(Testimony of Arthur F. Snyder.)

gave you the date, personally, about it, and you ultimately received the bill of particulars that you have just testified to? A. Yes.

Q. Now, the file that you prepared, did you compile that from memory, documents and records, after you got the bill of particulars, or did you file that file in the state in which it is, prior to the time that you had received the bill of particulars?

A. No. The itemization I have here was compiled after I saw the bill of particulars, from data that I had obtained over the entire job, and prior to the receiving of the bill of particulars.

Q. There was a certain amount of data that was maintained in your files at the time by you, for that bill of particulars? A. No.

Q. I mean, there was a certain amount of data that was in your files, and when you got this bill of particulars you had to sit down and do a little concentrating and go over the situation and place the continuity of documents, and establish the file in the condition in which it is now, is that true?

A. Not necessarily. The file was kept in order pretty much so at all times. It was merely a matter of referring back to it.

Q. Then you made up the record that you have as to your opinion as to what transpired sometime subsequent to July 21, 1941, that is the date of the bill of particulars. If you do not understand, the record will show that the bill of particulars was furnished Mr. Harloe on July 21, 1941.

(Testimony of Arthur F. Snyder.)

A. I see.

Q. I take it, then, that the information that you have was gotten together or compiled subsequent to that date.

Mr. Harloe: Just a minute. I do not think that question is exactly fair to the witness.

Mr. Doyle: I will change the question. [133]

Mr. Harloe: Might I make this suggestion, there was a bill of particulars in another case, of which this is an exact duplicate, furnished to me quite sometime before the date you refer to.

Mr. Doyle: We will take that date.

Mr. Harloe: Yes, take that date.

Mr. Doyle: While I am looking for that, how many bills of particulars have you seen in this case?

A. Only one that I recall.

Q. The only bill of particulars that you recall having seen was that in July, 1941, or in October, 1940?

A. October, 1940.

Q. So, then, some of the information in that file was gathered together and put in the condition which you have it now, from August 29, 1940 until subsequent to October 22, 1940?

A. Yes.

Q. Now, have you in the record that you compiled a document that was asked for yesterday, and that is in relation to the sum of \$4737? That amount was for original contract work, extra contract work, or payments on account of both?

A. Is that item on the bill of particulars?

Q. No, it is not. Yesterday I asked Mr. Harloe

(Testimony of Arthur F. Snyder.)

if he could get the statement in the sum of \$4737 with reference to some payments, whether they were on account of the original contract, or extra work, or both, and Mr. Harloe later looked through the documents and said he could not find it. Do you recall that?

A. No. I have a record of the payment of that amount.

Q. I realize you have a record of the payment, but have you a copy of the statement?

A. Yes.

Q. Upon which those payments were based?

A. I have a copy of the statement dated August 1, 1940, in the total amount of \$4737.49. [134]

Q. May I see it? A. Yes.

Q. That was the document that we were asking for yesterday. May I have that? A. Yes.

Q. Now, who prepared this document of August 1, 1940?

A. Well, that would be difficult to say.

Q. Let me change the question. I do not care so much for who made it. Who prepared it? Is that Mr. Pollia's signature?

A. That is his signature.

Q. That document has been in your file?

A. Yes.

Q. Is there any question in your mind but what that document pertains to the job?

A. No, there is no question, whatever.

Mr. Doyle: May I have this marked for identification, for the time being, your Honor?

(Testimony of Arthur F. Snyder.)

The Court: Yes.

(The estimate of partial payment dated August 1, 1940, by Andrew A. Pollia, is marked "Plaintiff's Exhibit 12 For Identification.")

Q. Now, Mr. Snyder, going back for a moment, when the document of May 28, 1940 was prepared, on direct examination you suggested that the wording of Mr. Pollia's letter of May 27, 1940, did not suit you, and you suggested some revision. You recall that? A. Yes.

Q. What were the revisions?

A. Oh, I don't recall that. I do recall that it was mainly the English, you might say, or the wording in certain cases. Might I explain at this time, in my capacity as a clerk I often did that for Mr. Ceriat, and he would accept my advice on the wording of certain letters or documents to be put in, and Mr. Ceriat referred it to me and asked me to read it over, and there were a few, some of the words that appeared at the time to be not quite exact, and I believe [135] I suggested that they change them, but just what they were I do not recall.

Q. As long as there was some revision made, or if there was some question about the English not being quite proper, or any other matter, it is fair to say that the contract was gone over fairly completely?

A. It was gone over completely, as far as technical wording of it is concerned. However, at that time I had no knowledge of what Mr. Pollia and

(Testimony of Arthur F. Snyder.)

Mr. Ceriat intended regarding the contract; they had not discussed it with me; I merely went over the contract with a view of checking the wording to see it read right.

Q. When you checked the contract that was finally made on May 28th, the wording, "to pit boxes" caused no reaction in you at all?

A. No, it caused no reaction, because I had no knowledge at that time whether Mr. Ceriat and Mr. Pollia had agreed between themselves that Mr. Pollia was to do work in the pits, or not.

Q. One other question on this subject: Upon reading the letter that Mr. Pollia had prepared on May 27th, when that said "to the pits," the wording of both documents is apparently similar and you let it go through.

A. I copied it.

Q. As a matter of fact, Mr. Snyder, is it not true that Mr. Pollia had actually done several days' work that was covered by this agreement, Plaintiff's Exhibit 2, before the document was returned from your Los Angeles office?

A. He may have, I am not positive.

Q. You would not say that he did not?

A. No, I would not say that he had or that he had not.

Q. Now, are these the only plans that you have, by "you" I mean the Flotation Systems?

A. No, there were work profiles made of each one of these pit boxes and the equipment. [136]

Q. And the changes?

(Testimony of Arthur F. Snyder.)

A. And the changes as covered by various change orders from the Navy.

Q. Where are the plans involving the various changes subsequent to the plans that are in evidence here?

A. Well, the originals are in our office at Los Angeles. In my own file I do not have copies of those plans, I don't know whether Mr. Harloe has any, or not.

Q. Do the corrected plans, or amended plans, or the additional plans, whatever word you want to use, show the extra work that was to be done in the pits?

A. They show the work as it was actually installed, and by studying those plans and comparing them with the original specifications, an engineer, or anybody familiar with plans, could quite easily pick out the extra work that was involved.

Q. Now, when was it that the Navy first required or requested some changes with respect to the time that you gave Mr. Pollia his first extra work order?

A. I could only make an estimate on that, it would be a guess. I do not have my Navy file in my possession here.

Q. Let us look at this extra work order, and perhaps that will be of some assistance.

A. That would give an indication of when it was. I would like to look at a letter I have here in my file, if I may. It was sometime prior to August

(Testimony of Arthur F. Snyder.)

7, because on August 7 we wrote a letter to Mr. Pollia, authorizing him to do whatever welding in various pits was necessary, and complete this job in accordance with the revised drawings, and we set forth the price he was to be paid for that work.

Q. When you got some revised drawing in order to meet the requirements of the Navy changes, did you discuss the revised drawing with Mr. Pollia?

A. Yes. [137]

Q. And you gave him extra work orders for those changes, did you?

A. Yes. This letter that I have just looked over is in respect to the work orders covering that.

Q. And, of course, as to the revised plans, there was no question in your mind at that time that the revised plans were in addition to the original work under the original plans?

A. No, I would not say that. I would say that the extra work involved between the original plans and the revised plans was any work which was done as to entitle Mr. Pollia to additional payments for said extra work.

Q. Around August 7?

A. Prior to August 7, because this letter indicates we had the plans and were ready to proceed with the work on August 7, and, therefore, the revision must have been in our hands sometime before that.

Q. Was there any discussion between Mr. Pollia and yourself between May 28, 1940 and some date prior to August 7, about work in the pits?

(Testimony of Arthur F. Snyder.)

A. There was considerable discussion about extra work in the pits not covered by the original plans.

Q. I will broaden my question: Was there any discussion between May 28, 1940 and prior to August 7 about any work in the pits, either according to your contention under the original contract, or by reason of an extra work order?

A. Only on additional work that was not shown on the original plans.

Q. Did you use those words to Mr. Pollia, that whatever work he was doing in the pits was on the original plans, on his original agreement, not necessarily in those words, but did you use the substance of those words?

A. There was never any question about it; the question about the work in the pits, as shown by the original plans, had never come up at that time; there was nothing said about it. [138]

Q. Are you sure about that?

A. As near as I can remember, I have no recollection of it.

Q. Now, in this letter of August 1, 1940, Plaintiff's Exhibit 12, in the sum of \$4737.49, is there any item specified in that letter which there was any conversation regarding between May 28, 1940 and August 1, 1940 as being extra work, and by "extra work" I mean work not according to your contention that Mr. Pollia was to do under the original contract?

A. Yes. On this estimate for partial payment

(Testimony of Arthur F. Snyder.)

are included, the first item, Extra for 32 wells on 6-inch pipe, for 32 wells on 8-inch pipe, which were made on the main storage tanks, which are unquestionably extra work.

Mr. Doyle: May I now have this letter of August 1, 1940 introduced in evidence?

The Court: It may be received.

(The letter of August 1, 1940, Estimate of partial payment, was marked "Plaintiff's Exhibit 12," in evidence.)

Mr. Doyle: Q. The work that is specified in the statement of August 1, 1940, was unquestionably for extra work in the pits? A. No.

Mr. Harloe: He did not testify to all of that.

Mr. Doyle: I will change my question. Withdraw that.

Q. Would you tell us, so that there will be no question about it,—will you please testify for the purpose of the record, in clarification of your previous answer, about some items not being under the original contract?

A. All right. We have extra for 32 wells on 6-inch pipe, 20 lineal inches each at 4 cents per lineal inch, \$25.60. We also have extra for 32 wells on 8-inch pipe, 26 lineal inches each at 4 cents per lineal inch, \$33.28. Those were changes that were necessary in order to adapt the [139] steel storage tank to the use of the special Aqua equipment. Those are two items for extra work not covered in the original agreement with Mr. Pollia.

(Testimony of Arthur F. Snyder.)

Q. On that point, Mr. Snyder, isn't it a fact that the original plans and specifications called for welding of all work throughout the job?

A. No. Some of the fittings were welded shop fittings, which were welded, and some were flange fittings which were bolted together.

Q. Now, when the letter of August 1, 1940, Exhibit No. 12, was prepared covering this work, some extra work had already been done in the pits?

A. Not necessarily.

Q. Not necessarily. I will change my question. Isn't it true that when this letter of August 1, 1940 was prepared and checked by you, that extra work had already been done by Mr. Pollia in the pits?

A. No; extra work had been done by Mr. Pollia, but it was not done in the pits.

Q. Then I take it from your answer, when this letter of August 1, 1940 was prepared Mr. Pollia at that time had not done any extra work in the pits?

A. Let me explain what actually happened there.

The Court: I think you had better ask the question.

Mr. Doyle: Q. Is it not a fact, Mr. Snyder, that when this letter of August 1, 1940 was prepared, that Mr. Pollia had actually done extra work in the pit?

A. He had done extra work, but as to whether it would be considered to be in the pit, or not, is a matter of individual opinion.

(Testimony of Arthur F. Snyder.)

The Court: The question is, had he done it in the pit?

A. I can only answer that by saying "No."

Mr. Harloe: Explain your answer.

A. This particular work that he did on these two items was [140] some nipples that were welded, the work was done at the bench outside of the pits, and it was put in the pits later. The work was done at the bench, and taken down in the pit; it was for the pit, but it was not done in the pit.

Mr. Doyle: Q. Let me put it this way, in view of your last answer, it was work, then, that Mr. Pollia did for work that was to be done in the pits, is that what you mean?

A. Yes, I think that is correct.

Q. And the work that Mr. Pollia did, as you say, at the bench, that was for work in the pits, was extra work, but you are taking the position that he did not actually do it in the pits, is that right?

A. That is right; if I said that he did the work in the pit I would be stating a falsehood, because, technically, he did not.

Q. Then we come down to this situation, Mr. Snyder, that the contract of May 28, "up to the pit"—you are testifying now under the May 28 contract, "up to the pit," the mere fact that Mr. Pollia did the work at the bench was not extra work, when that work that he did, as you say, at the bench was for work that was to be done in the pit?

(Testimony of Arthur F. Snyder.)

Mr. Harloe: I object to that question.

The Court: I think the form of the question is objectionable.

Mr. Doyle: Q. Your idea, Mr. Snyder, is that any extra work that Mr. Pollia did relative to work in the pit was not actually work in the pit, because it was done on the bench?

A. No, this work not only was not done at the bench,—I mean this work was not only done at the bench instead of in the pit, but it was work for a very special purpose, it was work done because the tanks that were furnished us were not adapted to this special equipment and we had to make this revision for [141] the special equipment, which was to go in the pit and in the tanks.

Q. In view of your last answer, then, that there was some revision of the plans and specifications, and that required extra work orders—

Mr. Harloe: I think that both you and the witness are working at cross purposes. The witness has testified that the extra work, in fact, was no part of his work, but it was extra work done by Mr. Pollia by reason of the fact that the Aqua people's joints had to be rewelded in order to install them. You and the witness are working at cross purposes. If you ask him who was to install it, you might get at it quicker. I think the witness and you are working at cross purposes.

Mr. Doyle: All right, Mr. Harloe.

Q. Mr. Snyder, if there is any question that I

(Testimony of Arthur F. Snyder.)

ask you that you do not understand, it is your privilege to say you do not understand it. I do not want you to answer any question you do not understand. A. All right.

Q. Between May 28, 1940 and August 1, 1940, under Plaintiff's Exhibit 12 in evidence, Mr. Pollia did some extra work that was required of the Flotation people, as the general contractor, and for which work he received a special order.

A. That is correct, yes.

Q. And the extra work that Mr. Pollia did between May 28 and August 1, 1940, was for some kind of work for some kind of equipment, I do not care what it was, that was to be used in the pit.

A. It was an adaptation that was installed in the pit, yes—an adaptation to the tanks, I meant to say.

Q. And Mr. Pollia did not, according to you, make the adaptation or his men did not actually in the pit? A. That is right. [142]

Q. Your position is that as long as Mr. Pollia or his men did the work at the bench and not in the pit, that under the original contract of May 28, 1940 it was work under the original contract, is that right? A. No.

The Court: Isn't that calling for the opinion of the witness on the construction of the contract?

Mr. Doyle: I suppose, your Honor, it probably is, but I am trying to get on a common ground with the witness as to what he has in mind.

(Testimony of Arthur F. Snyder.)

Q. Let me put it this way: In any event, any work between May 28 and August 1, 1940, that Mr. Pollia did under an extra work order, that work was definitely put in the pit?

A. No, I do not believe that I could say that it was, because he did lots of work during the same period that was not put in the pit.

Q. A short time ago you said that there was some welding or some work that was necessary to make some connection with the Aqua equipment. Did you so testify? A. Yes.

Q. That is what I am talking about. Whatever work Mr. Pollia did with reference to this welding for the Aqua equipment between May 28, 1940 and August 1, 1940, included, in truth and in fact equipment that was put into the pit?

Mr. Harloe: Your question is too complex. The witness has testified that there are lots of other work that was not put into the pit.

Mr. Doyle: I will put it this way:

Q. Mr. Snyder, you used the word just a moment ago, "adaptation." A. Yes, to the tank.

Q. Now, we will meet upon a common ground. The adaptation that Mr. Pollia provided between May 28 and August 1, 1940 was actually [143] installed in the pit? A. Yes.

Q. And for those adaptations that were actually installed in the pit under this letter of August 1, 1940, your concern actually paid Mr. Pollia for that work, didn't it? A. That is right.

(Testimony of Arthur F. Snyder.)

The Court: I think this is a good time to take our noon recess.

(A recess was here taken until 2:00 o'clock p.m.) [144]

Afternoon Session

2:00 o'Clock P.M.

ARTHUR F. SNYDER,

Recalled;

Cross-Examination

(resumed)

Mr. Doyle: Q. Now, Mr. Snyder, you answered just before the recess that after this document of August 1, 1940, was prepared, that it was sent to the Los Angeles office of the Flotation Systems and paid?

A. I believe it was paid, yes.

Q. When you drew up the items contained in this letter of August 1, 1940, which was for the sum of \$4737.49, that was for Mr. Pollia to get some money, is that right?

A. I cannot be positive that I drew up that document.

Q. Let me change the wording this way, then, if you are not positive that you drew up this document you were aware of the fact that there was such a document? A. Yes.

Q. And were you also aware of the fact that the document was going to go to the Los Angeles office? A. Yes.

(Testimony of Arthur F. Snyder.)

Q. And pretty near \$5000 was involved?

A. That is right.

Q. Did you take any steps to communicate with your Los Angeles office as to whether or not any of the items contained in this letter of August 1, 1940 should not be paid to Mr. Pollia because it was work that he should have done under his original contract? A. I do not believe so.

Q. Now, before the 12 o'clock recess you spoke about a letter dated August 7. A. Yes.

Q. Have you got that letter?

Mr. Harloe: You have that letter. That was a letter written to your client. Haven't you got the original?

The Witness: The letter addressed to Mr. Pollia, is that the one you are referring to, August 7? [145]

Mr. Doyle: This morning we were talking about a letter of August 7. You said the letter of August 7 was a letter that you had written to your Los Angeles office, which resulted in extra work orders.

A. I am a little confused as to which letter we were referring to.

Q. I don't know, either, Mr. Snyder, and that is the reason I am asking you for it.

A. I do have a letter dated August 7, addressed to Mr. Pollia, authorizing him to do certain extra work at certain stipulated prices, but, as I recall the testimony this morning, it was from the date of this letter that I said there had been certain changes

(Testimony of Arthur F. Snyder.)

prior to that; otherwise, I would not have written the letter.

Q. I do not wish to see your entire file, but may I have that letter?

A. Yes. I believe you have a copy of it.

Q. Did you write two letters on August 7 to Mr. Pollia?

A. I don't know.

Q. Well, I would like to show you Plaintiff's Exhibit 9, which is a letter dated August 7, 1940, and carbon of a letter of August 7, 1940 which you gave me, and you will observe that in the letter in evidence there are certain omissions on the original letter which occur on the carbon copy.

A. I see what you are referring to. How that came about is, perhaps I did not have a sufficient number of carbon copies and I typed up an additional number of copies. I think you will find the wording is the same, although they are not identical copies.

Q. I agree with you that the wording is the same, but you have attempted to make some extensions opposite the prices, and they do not appear upon the letter in evidence.

A. Yes.

Q. What is your explanation of that fact?

A. Those extensions appear to have been typed in later, they seem to be a little bit [146] heavier.

Q. It is not an original typing?

A. No. When this was done is immaterial, because, as I say, it is merely an extension. The original copy reads, "Wrap approximately 269 6-

(Testimony of Arthur F. Snyder.)

inch joints and fittings at \$2.10.” That is extended, multiplying the \$2.10 by 269, and I have put the amount in dollars and cents that that amounts to out here.

Q. Your carbon copy does not include the additional words, “Your offer of 30 cents per lineal foot is being taken into consideration”?

A. Yes, it does include that the offer of 30 cents per lineal foot is being taken into consideration.

Q. How do you account for the absence of extensions from here?

Mr. Harloe: What is the difference what we have on the copy? The original is in evidence. I will object to that.

A. This is my own file copy.

The Court: As I understand it, this copy is not a carbon copy of the letter?

A. No.

Mr. Harloe: That is the reason I make the objection.

A. That is a file copy I had for my own information in my own files.

The Court: If there is any question a copy can be furnished.

A. Yes, I will be glad to submit one.

Mr. Doyle: Q. Now, Mr. Snyder, the letter of August 7 that you have in your hand, the letter of August 7, the copy of letter of August 7 that you have in your hand, is that an authorization for extra work?

(Testimony of Arthur F. Snyder.)

A. Yes, it is. It says, "You are authorized to proceed with the following extra work," etc.

Q. Did you consider the work on there as extra work? A. Yes.

Q. Did it have anything to do with pit work?

A. It had to do with pit work that was extra and above that shown on the original [147] plans and specifications.

Q. Well, now, with that knowledge on August 7, 1940, that it had to do with pit work above that shown on the original plans and specifications, and the wording of the contract of May 28, 1940, did you have any conversation with Mr. Polia about the fact that it was over and above and beyond as to what your interpretation of the contract of May 28th was?

A. We had no conversation regarding the interpretation of the original contract.

Q. At any time?

A. Not at this time, but we did after that.

Q. I mean at any time during the circumstances surrounding this letter of August 7, 1940?

A. No, there was no conversation regarding the interpretation of the contract at that time.

Q. Will you look through your file and see if you have a letter of August 23?

A. Yes, I have a letter of that date.

Q. That is Plaintiff's Exhibit No. 10. On the fourth line of the first paragraph it says, "You are authorized to proceed as instructed by us with any

(Testimony of Arthur F. Snyder.)

additional work necessary to complete the pit piping." Is that right?

A. That is right, partially, but not complete. The rest of the clause reads, "but not covered by the original plans and specifications."

Q. Did you have any conversation with Mr. Pollia on the 23rd of August about that, about the effect of the work, or its connection with the original plans and specifications?

A. I do not believe so.

Q. Have you that original specification here?

A. Either Mr. Harloe has or it has been submitted in evidence, I don't know which.

Q. Did I understand you to say that you had typed up several letters containing the language in the letter of August 7, 1940?

A. It appears that I did. This letter that is in the file is obviously not an exact copy of the carbon of letter. And I will [148] explain that by saying that perhaps I needed additional copies from what I originally made, so I typed another copy.

Q. I will refer you back to the letter of August 23 again, the last paragraph, which says, "This authorization does not supersede that covered by our letter of August 7, 1940."

A. That is right.

Q. "And the above prices on welding apply only to welds that must be made in place inside the pits." What conversation did you have with Mr. Pollia about that matter?

(Testimony of Arthur F. Snyder.)

A. Mr. Pollia previously said that he would on extra work, not covered by the plans and specifications—this extra work due to the change orders given by the Navy, he would do any necessary welding at a price of 4 cents a lineal inch, and later on some of this extra work caused by the change orders had to be done in difficult places, and Mr. Pollia said he could not do it for that price, because his cost was considerably higher, and in view of the fact we wrote this letter of August 23 and included in it the price for making these welds which had to be made in place and not at the bench.

Q. And when the welds had to be made in place, when you used the words in difficult places, you mean you knew in the pit it was hard to get at the job?

A. What I mean, Mr. Doyle, is some things could be welded together at the bench, where they could be put at the welder's disposal, and in some pits, suppose you had a piece of pipe in the ground, and you could not take out the pipe and weld the fitting into the pipe, naturally you had to excavate around the hole, the welder had to stand on his head to do the work, and it was a much more expensive job.

Q. So some of these were more difficult welds in the pit?

A. Yes; I believe there was some of these changes authorized by the [149] Navy as extra work—I can't remember exactly where they were.

(Testimony of Arthur F. Snyder.)

Q. Don't you recall, Mr. Snyder, that Mr. Pollia talked to you about that very thing, that question of the difficulty in doing the job in the pit, in response to a question by you, or an inquiry by you as to the price, and he gave you the price of doing the work inside of the pit; isn't that true?

A. No, he gave us the price for doing the work inside or outside of the pit, wherever the weld had to be made in place and not at the bench.

Q. But, Mr. Snyder, you have testified right along that the contract with Mr. Pollia covered all the work outside of the pit at all times.

A. Oh, yes, the contract covered the work outside of the pit, and in our interpretation it covered the work inside of the pit.

Q. Why did you issue work orders to Mr. Pollia to do work inside and outside of the pit when it was a more difficult job?

Mr. Harloe: He has testified he issued work orders, and why he did not I submit is immaterial.

The Court: I will permit the question.

A. I can only answer that by giving a further explanation.

Dr. Doyle: All right, let us have your explanation.

A. This extra work was caused by change orders from the Navy, and it was not all inside of the pit, some was outside the pit and some inside. I remember some in the field line clear away from any of the pits, there was a 6-inch fitting that had

(Testimony of Arthur F. Snyder.)

to be welded into the pipe line that Mr. Pollia had already installed, and that was one of the difficult jobs, where he was entitled to this price, whatever it is here, 4-inch pipe weld \$1.75 per weld.

Q. That was not work that was done in the pit?

A. No, it was done outside of the pit. The principal item I am referring to, [150] that I am thinking of, as I recall, was done outside of the pit. There were also, I believe, some of these extra welds that were done inside of the pit, but I understand there were several welds that were made outside of the pit.

Q. Can you recall them now?

A. Well, I know of one specific instance.

Q. What was it?

A. Mr. Pollia laid—I am not positive whether it was a 4-inch or 6-inch pipe at the moment, but the Navy decided to install additional equipment which would require an outlet from this pipe line; the line was laid and then we had to make the change before gasoline was put in the line, because it is impossible to do welding on the line after gasoline is in it, so they gave us a change order, whereby we were to cut this line and weld into the line, and that welding was in the field delivery line.

Q. Do you know the approximate date of that occurrence?

A. Well, it was about the time of this letter, or shortly before this letter of August 23 that they requested us to do that.

(Testimony of Arthur F. Snyder.)

Q. Have you got the change order from the Navy on that?

A. I do not have my file here.

Q. Where is it?

A. I believe it is in the Los Angeles office.

Q. Isn't it true that under the specifications under which you were working on this job that the pipe fitting has to be all welded?

A. No. The gasoline pipes, in general, are welded.

Q. Is it not true that all of the gasoline pipes are welded?

A. I could not answer that without looking at the plans. You see, we do a lot of these jobs. I hesitate to answer that. At least, the great majority of it was welded. I will say that the majority of it was welded.

Q. Was not welded?

A. Was welded, that is, the gasoline pipes, [151] you understand.

Q. You said that as to the fueling pits which were shown on the plans, Flotation was working on them as a general contractor, and they were not mentioned in the contract. Did you talk about the contract with Mr. Pollia?

A. No, I did mention in the previous testimony that there were ten fueling pits that were installed under our original contract with the Navy, and there were seven additional ones that were installed under a supplemental contract with the Navy.

(Testimony of Arthur F. Snyder.)

Q. Did Mr. Pollia do any additional or subsequent installation of pits, fueling or otherwise?

A. He was given orders No. 273 and 274 to install equipment in those fueling pits.

Q. There was never any question raised by either you or Flotation, or Mr. Pollia, when he got orders 273 or 274 to do the work inside of the pit, about his doing that work in the other pits which were covered under the contract of May 28, 1940—even at that time there was no mention of it?

Mr. Harloe: Just a minute.

Mr. Doyle: I will withdraw it.

Mr. Harloe: It is not fair to the witness——

The Court: The question is withdrawn.

Mr. Doyle: Q. Is it not true that the original contract with Mr. Pollia, as it reads in the document, not your interpretation, is, “up to the pits”?

A. The wording is, “Pollia will do the piping to the pits.”

Q. Now, on the ten additional fueling pits that were installed, or subsequent to the additional order by the Navy, did Mr. Pollia get an additional work order for that work in those pits?

A. They were not additional pits, the ten were not additional pits.

Q. What were they?

A. The ten fueling pits designated on the [152] Navy plans and specifications as “F” referred to as fueling pits, were at a different location than the rest of the job, and they were not referred to in

(Testimony of Arthur F. Snyder.)

our contract with Mr. Pollia. At the time the contract was entered into with Mr. Pollia, I am quite sure that there was no intent of any of the parties that Mr. Pollia would do that work in those ten pits, and at a later date we requested an estimate from Mr. Pollia, as to how much he would charge to do this work in the ten fueling pits, or "F" pits, which led to giving him an order for doing this work.

Q. Exactly. When Mr. Pollia got the order to do the work inside of the ten fueling pits was there any conversation between you and Mr. Pollia about his doing the work on the previous bid mentioned in the letter of May 28, 1940?

A. No, not that I recall.

Q. Now, on the plans No. 1210-43-3, will you point out where the fueling pits are which you just testified to?

A. These are indicated on the Navy plans as "F", known as fueling pits. I see they call them service pits. We have been referring to them as fueling pits.

The Court: Which ones?

A. In the upper right-hand corner.

Mr. Doyle: Q. This plan of the service pit F was the type of fueling pit that was subsequently installed under an additional work order?

A. Under Order No. 273.

Q. That particular service pit appears on the plans and specifications dated November 29, 1939?

(Testimony of Arthur F. Snyder.)

A. That is right.

Q. That was long before Mr. Pollia ever got any orders to do any work? A. That is right.

Q. You stated, I am quoting you, that you were reasonably sure that Mr. Pollia installed work inside of some of the pits before the [153] Navy required any changes. A. Yes.

Q. What is there about your answer that causes you to think that you are reasonably sure that Mr. Pollia did some work inside of the pits before there was any extra work order?

Mr. Harloe: I do not understand that question, myself. Maybe the witness does.

Mr. Doyle: I withdraw that question.

Q. I understood you, and if I am in error I wish you to correct me, to testify this morning that you were reasonably sure that Mr. Pollia had done some work inside of the pits before the Navy ever issued any additional or changed plan or specification. A. That is right.

Q. Now, what is there that causes you to say that you are reasonably sure that he did some work inside of the pits before that time?

A. You mean why I am reasonably sure?

Q. Yes.

A. Well, I will have to rely on my memory largely in that case, but as soon as this contract was awarded Mr. Pollia, on May 28, 1940, he went ahead with numerous branches of the work immediately, and I distinctly recall that he was

(Testimony of Arthur F. Snyder.)

working on various phases of the work, and some of the pits were ready for him to install equipment in them, and it is my recollection that he went ahead and did all of the work wherever it was available for him to do so.

Q. Is that your answer?

A. That is my answer.

Q. Did you ever witness on the job, personally, ever see Mr. Pollia, or any of his men from the time that you just testified to, actually do any work inside of the pits?

A. I saw him do work inside of the pits, but something that happened two years ago is pretty difficult to state under oath, what he did do.

Q. What did he do?

A. I just stated he was doing all phases [154] of work, he was laying pipelines, he was doing everything that conditions would permit him to do, including pipelines inside of the pit and pipelines outside of the pits.

Q. You say he was doing all kinds of work, but you don't know exactly what he was doing. Could it not have been possible—Withdraw that question. Mr. Pollia was to put his pipes in there so that they could connect up with the special equipment, isn't that true?

A. Not entirely. You used the word "special equipment," there was standard equipment, also.

Q. Mr. Pollia was to run his pipe to the concrete wall of the pit so that the extension through

(Testimony of Arthur F. Snyder.)

the wall could be connected up to some equipment?

A. That is right.

Q. Is that right? A. That is right.

Q. Did you, personally, ever see Mr. Pollia, or any of his men, connect any of the pipe extensions through the concrete wall of the pit up to any special equipment inside of the pit?

A. Yes.

Q. What did he connect up?

A. He was connecting to plugs valves, check valves, making up the weld connections that were to enter and connect these various parts of equipment inside of the pits, and so on.

Q. This was other than extra work orders?

A. Yes.

Q. When was that?

A. That was during the period from May 28 to August 30, I can say that definitely, during that period.

Q. During that time? A. Yes.

Q. Isn't it true that during the August period that you have just testified to that the Aqua people had their men working in the pits?

A. That is correct.

Q. Did you ever see any of the Aqua people connect up their equipment with the Pollia extension into the pit?

A. No, the [155] Aqua representative assembled his equipment and installed it in the tank, that is as far as he went.

(Testimony of Arthur F. Snyder.)

Q. By the way, I note that you prepared this statement when Mr. Pollia was going to Los Angeles.

A. As I recall, I believe that is correct.

Q. And, as I understand you, when Mr. Pollia was at the Air Base at Alameda, there was still no question raised about work inside of the pit?

A. There was at the time I prepared that statement but not prior to that.

Q. Then, as I understand it, the night that you were preparing that statement, that was the occasion that Mr. Pollia went to Los Angeles, there was a question raised for the first time about work inside of the pits?

A. There was, very definitely, because we had quite an argument about it.

Q. Who raised the point? A. Mr. Pollia.

Q. Tell us the conversation that occurred.

A. I don't remember the exact conversation.

Q. Give us the substance of it.

A. The substance of it was, Mr. Pollia stated that he was going to get paid for all of the work inside of the pit, and I said I didn't know whether he was going to get paid for it, or not, that would depend on the people in our office at Los Angeles. He said, "Well, I am going to get paid for it, and I want a list of it signed by yourself and I am going to take it down there and going to get paid." I know the outcome of the conversation was that I agreed to draw up a document of all the work done,

(Testimony of Arthur F. Snyder.)

regardless of whether it was covered by this contract or whether it was not, or whether he was to get paid for it, or not; we took an inventory of all the work that he had done on the work to be done—I believe there was work not completed at that time; we made up this inventory, and [156] I gave it to Mr. Pollia to take down to Los Angeles with him, and let him settle it with our office down there.

Q. Who is the first one who raised the question about paying for the work inside of the pits?

A. Mr. Pollia, I believe.

Q. Was that the first mention made of it, Mr. Snyder?

A. The first mention I recall, Mr. Doyle.

Q. Isn't it true that in so far as any question about work inside of the pits is concerned, the first time it came up was that night?

A. No, the first time it came up was a few days, a day or two prior to that, when Mr. Kalte was in the office, and Mr. Pollia brought in the bill for all of the work he had done inside of the pit.

Q. Then you testify the first time it came up was the night before——

A. A day or two.

Q. In a discussion between Mr. Kalte and Mr. Pollia and yourself, is that right?

A. I believe Mr. Ceriat was there, too.

Q. Were you in the office when this question first arose, or did you happen to come in during the course of the discussion?

A. No, I was in the office, as I recall.

(Testimony of Arthur F. Snyder.)

Q. And Mr. Pollia came in with this statement?

A. Yes.

Q. With the statement of the work outside and inside of the pits? A. That is right.

Q. Who took the issue they would not pay it, you, or Mr. Kalte?

A. There was no issue taken. The question was raised why he billed us for that, whereupon the contract was brought out and the wording of the contract stated that Mr. Pollia would do the work to the pit, and there was not very much more said at that time.

Q. That is the fact, is it not, you produced a copy of the contract from the Flotation Systems, and the contract was read, to [157] do the work up to the pit, and that ended the argument?

A. No, it did not end the argument.

Q. What happened?

A. To be specific, Mr. Kalte had to get an airplane back to Los Angeles, and I do not recall exactly what was said, but the thing was dropped right there, and Mr. Kalte went back to Los Angeles to think it over, and I took him to the plane. That is about all.

Q. That did not end the argument, because the argument is still going on, but what I meant to put to you was, when Mr. Kalte and/or yourself reread the contract of May 28th and came down to the language "to the pit," there was nothing more said about the matter at that time?

(Testimony of Arthur F. Snyder.)

A. Mr. Kalte said, "Well, I will take this down to Los Angeles and discuss it with the other members of the organization," or words to some such effect.

Q. Then, pursuant to Mr. Kalte's instructions to you, you prepared this inventory or this statement?

A. I do not believe Mr. Kalte instructed me to issue this inventory. I did it under pressure of Mr. Pollia's demand.

Q. As a result of some discussion you prepared some kind of a statement, did you?

A. Yes, at the request of Mr. Pollia I prepared it.

Q. And that statement included all the work that he had done inside and outside of the pit?

A. All the work that he had done, and all the work he had not done, I put down on the sheet.

Q. Have you got that statement?

A. I do not believe I have it.

Q. Is that in Los Angeles, also?

A. I don't know. We tried to locate that particular inventory, I would not call it a statement, I refer to it as an inventory of the work on the job. I do not seem to have a copy of it.

Q. Isn't this true, that it was an inventory—withdraw that. [158] Isn't it true that Mr. Pollia wanted some money on account? A. Yes.

Q. Isn't it true the question was as to how much money he should receive on account?

A. Yes.

(Testimony of Arthur F. Snyder.)

Q. And in order to determine if there was money due him, at all, in order for your Los Angeles office to make any payment, whatsoever, they would have to have some account or statement to show them what they were doing?

A. That is right.

Q. And the inventory that you prepared was only an inventory of all the work—by that I mean inside and outside of the pits? A. Yes.

Q. That Mr. Pollia had done or completed up to the night that you drew the inventory—I am not interested in all the other work, because we are not involved with that.

A. That is correct, with this exception, that I think that there were a few connections, some of the work that had not yet been done, and to give the complete basis for our Los Angeles office to act upon in accordance with their best judgment, we also listed the work that had not yet been done but would have to be done for completion of the job.

Q. In other words, you claimed that there was some work showing on the inventory that Mr. Pollia was to do? A. Yes.

Q. And Mr. Pollia, at that time and place, mentioned that the extra work was not under the original contract?

A. Yes, he mentioned at that time that portion was extra.

Q. Mr. Pollia was going to Los Angeles to get

(Testimony of Arthur F. Snyder.)

money due him based upon your inventory from the beginning of the work up to the night he left?

Mr. Harloe: I object to that as asked and answered.

The Court: I think the objection to the repetition is good. [159]

Mr. Doyle: Q. Isn't it a fact, Mr. Snyder, that Mr. Pollia was insisting upon your drawing an inventory so that he could take it to your Los Angeles office, so that they could make a payment to him from the inventory that you prepared?

Mr. Harloe: That was not the testimony, and I object to it again.

The Court: You can ask him if that is not the fact.

Mr. Harloe: May I have that question read?

(Question read by the reporter.)

A. That is correct.

Mr. Doyle: Q. You were not at the Los Angeles conference the following morning, or at any time thereafter? A. No.

Q. Referring to the testimony that you gave this morning about the bill of particulars, "Welding joints, \$195.90," and which you have no record of in the record that you have prepared, did you see Mr. Pollia do any welding of any of the joints involved therein? A. Which item is that?

Q. Item No. 3.

A. I saw him weld the joints in the pipeline. He had to weld the pipes together to install the pipeline.

(Testimony of Arthur F. Snyder.)

Q. I understood you, in reply to Mr. Harloe this morning, to deny the item No. 3, of \$195.90.

A. That is right. We had no knowledge of what that item constitutes, because in the original contract it states that Mr. Pollia will lay the pipeline and install the gasoline pipes; he would have to weld them together to install it, and the contract specifically states including welding, and for what reason he has charged us Item 3, we do not know.

Q. Then you do not deny that he might have done this work and you not have seen it?

A. Yes, I deny it, because I know all of the work that was done, and I know it was all necessary to [160] the installation of the pipeline.

Q. Mr. Snyder, if you will, we will go back to your letter of August 23, 1940. Have you got it?

A. Yes.

Q. You have some figures there on pipe welding.

A. That is right.

Q. Is it your contention that the pipe welds mentioned in the letter of August 23, 1940 were not the pipe welds specified in the bill of particulars?

A. That is right. The pipe welds authorized in our letter of August 23, 1940 were pipe welds and extra work caused by the change orders from the Navy.

Q. How do you know, then, that these extra welds caused by the change of the work order from the Navy was not this very work that Mr. Pollia is charging you for now?

(Testimony of Arthur F. Snyder.)

A. Because all the items are accounted for in certain items that he shows.

Q. Where?

A. Well, let us go through the list, here. This requires me to refer back to see what each of these items refers to. Here is one of them, Work Order 1215, to Mr. Pollia, it says, "Cut off turn and re-weld 6-inch flange on B tanks at \$4.50 each, \$9." That is Order No. 1215.

Q. What is the date of that order, if you have it there?

A. My copy does not have the date on it. I don't know whether it is on the original, or not, that is Order 1215, and there is an item for \$242, and one of these welds is included in that item, or several of the welds, I should say.

Q. Well, now, I beg your pardon, have you finished?

A. I think if you will give me a little time, here—the majority of them Mr. Pollia has under the last item on page 1 of the bill of particulars, letter dated August 23, 1940. You will recall my testimony this morning that I took the amount of \$4903.20 and I said there were certain items authorized for which Mr. Pollia was entitled to payment, and I enumerated those [161] items in my testimony this morning.

Q. Have you finished? A. Yes.

Q. Now, on work Order 1215 that you have referred to, it was some work on cast iron pipes—

(Testimony of Arthur F. Snyder.)

Mr. Harloe: Show him the order.

A. I have it here, that is Order 1215, it calls for the installation of 54 feet of 8-inch water main removed by us and replacing the same water line, and cut off turn and reweld 6-inch flange on two tanks at \$4.50 each weld.

Mr. Doyle: Q. Now, in the letter of August 23, which was dated prior to Order No. 1215, have you got that? A. Yes.

Q. The letter of August 23 was for welding also.

A. That is right. Order No. 1215 was a specific order to do certain specified work.

Q. What about the letter of August 23?

A. August 23 was a letter authorizing Mr. Pollia to do the work not covered by the original plans and specifications, the extra work in all of the pits.

Q. Wasn't Order 1215 an extra work order, also?

A. That is right, but you might say in this particular case it is a duplication, it is an item that came up later that did not come to our attention at the time we wrote the first order, and it is merely an order for him to do particular items.

Q. Then, do I understand you to testify that notwithstanding the letter of August 23, in which you requested certain welding to be done, that you issued a written order on the same item on August 29?

A. No. I would classify the letter of August 23

(Testimony of Arthur F. Snyder.)

as a blanket order for all extra work not covered by the original plans and specifications, at designated unit prices. The three-item order No. 1215 is, you might term it, a duplication [162] of that order, inasmuch as the three items call for extra work. That is all it amounts to, a duplication.

Q. All right. In order to avoid a misunderstanding, you used the words, you might interpret the letter of August 23 now as a blanket order. Do you recall that?

A. That is what I said, it is a blanket order to do all the work. I did not break up all the work not included in the original plans and specifications in regard to working out unit prices.

Q. If you gave Mr. Pollia a blanket order on August 23 to do all the extra welding, as you testified to, what was the occasion of your issuing another order on August 29 for welding, also?

A. To be specific, there was no occasion for it, it was unnecessary.

Q. That is the reason, you say, as to the charge of \$195.90, you don't know anything about that?

A. No, that has nothing to do with it. There is no connection with it.

Q. Do you know how much Mr. Pollia paid for the civil engineer, which is \$25 in the bill of particulars?

A. I don't know how much. All I know is, at the time I asked him he said the time came to \$4 and something, whatever it was, which I gave in my testimony.

(Testimony of Arthur F. Snyder.)

Q. \$4.35? A. Yes.

Q. Notwithstanding the fact that you asked Mr. Pollia how much Flotation owed Mr. Pollia for the use of that civil engineer, you don't know how much Mr. Pollia paid the civil engineer for his work?

A. Naturally not, that is not my business, what he paid.

Q. You do not mean to say that the bill that Mr. Pollia charges as \$25 was \$4.35?

A. Yes.

Q. If you don't know how much he paid the civil engineer, how [163] could you say he paid only \$4.35?

Mr. Harloe: I object to that as argumentative.

Mr. Doyle: I will withdraw the question. Just one more matter and I will finish with this witness.

Q. You say that there was an item of \$2300 where the tile drain work was omitted.

A. That is right.

Q. Why was the tile drain work omitted?

A. The original plans and specifications were for an 8-inch tile drain line, and the Navy engineers calculated and found out that an 8-inch line was inadequate, whereupon they requested us to install a 12-inch drain line, and our original contract with Mr. Pollia was he was to install an 8-inch drain line, and when this change came up we decided not to have him install it, and, therefore, a deduction of \$2300 from the contract price was in order, because Mr. Pollia did not install any

(Testimony of Arthur F. Snyder.)

drain line at all. The wording of the original contract with Mr. Pollia specified that if the drain line should be omitted that amount should be deducted.

Q. The Government substituted the 12-inch tile drain for an 8-inch tile drain?

A. They definitely required a 12-inch drain line, which was installed by another contractor.

Q. About when was it the Navy required a 12-inch drain line?

A. Even at the time we entered into the contract with Mr. Pollia, they were discussing, the Navy engineers were discussing this, and they felt at the time, they were not positive, they had not decided at that time that the 8-inch line would be inadequate, and it was for that reason, I believe, that when Mr. Ceriat and Mr. Pollia wrote up that contract they put in that provision in the contract, if they Navy did decide not to put in the 8-inch line a deduction of \$2300 would be made from the amount of the [164] contract.

Q. Will you point that out in the contract, if you please? I am referring to Plaintiff's Exhibit 2, May 28, 1940. The fourth paragraph mentions a 12-inch drain pipe.

A. I see that I am in error about that. I do have a paper in my file signed by Mr. Pollia which is a subsequent part of that contract, as to omitting the tile drain. Can I show you this, Mr. Doyle? It is not an original, I believe you have the original.

(Testimony of Arthur F. Snyder.)

Mr. Harloe: Is there any question that that was omitted, Mr. Doyle?

Mr. Doyle: There is no question about its being omitted, I am merely attacking the recollection of this witness, his credibility about a lot of matters.

A. I was in error there. I thought it was in the original contract; it was not. This is a supplemental agreement.

Q. This is the document that you are talking about?

A. That is the document I am talking about. I was in error in stating it was incorporated in the original contract.

Q. Do you know whether or not any information had ever been communicated to Mr. Pollia with reference to the fact that the Government ever wanted or ever contemplated anything other than the 12-inch drain?

A. No. The original specifications called for an 8-inch drain, at the time the contract was drawn up between Flotation Systems and Mr. Pollia, and——

Q. (Interrupting) You say Mr. Pollia——
The Court: Let him finish.

A. The 8-inch line was on the specifications, and Mr. Pollia agreed to install this work as per plans and specifications, so I see no reason why the 8-inch line was not originally contemplated. [165]

Mr. Doyle: Q. Would you say, then, that Mr. Pollia, in his contract of May 28, 1940, apparently figured on a 12-inch drain line?

(Testimony of Arthur F. Snyder.)

Mr. Harloe: That is calling for somebody else's state of mind.

Mr. Doyle: I will reframe the question.

Q. In view of your last answer, then, was there ever any occasion about Mr. Pollia figuring on a 12-inch instead of an 8-inch drain line, as shown in the contract?

A. We are getting back to the time question again, and it makes it hard to remember. I will say it is possible that Mr. Pollia was advised that it would be a 12-inch line, and at the time that the contract was entered into it is possible that he might have figured on installing a 12-inch line on May 28th instead of an 8-inch line. However, the line was not installed by Mr. Pollia, and he signed an agreement whereby he agreed that the Flotation Systems could deduct \$2300 if he did not install it.

The Court: We will take our recess of ten minutes at this time.

(After recess:)

Mr. Doyle: Q. Mr. Snyder, the letter of August 23, 1940, which is Plaintiff's Exhibit 10, covers some joints and some welds, and contains, among other language, the following: "You are authorized to proceed as instructed by us with any additional work necessary to complete the pit piping, but not covered by the original plans and specifications."

A. That is right.

Q. Is that correct?

A. That is correct.

(Testimony of Arthur F. Snyder.)

Q. You state the work and the price?

A. Yes.

Q. "This authorization does not supersede that covered by our [166] letter of August 7, 1940, and the above prices on welding apply only to welds that must be made in place, inside the pits."

A. That is right.

Q. Now, in this letter of August 23 you refer to the contract of May 28, 1940.

A. Yes.

Q. And in the original contract of May 28, 1940, Item 2 is, "Complete installation of all gasoline pipeline as covered by plans accompanying specifications 9505, including necessary excavation, back-fill, replacement of red rock surfacing, repairs to any existing roads, welding, and testing all joints and all connections to pit boxes."

A. Yes.

Q. Then you specify pits A, B, C-2, D and E.

A. That is right.

Q. The letter has a list of the tanks corresponding to the Navy plans?

A. Each pit has a number in them.

Q. In A-1, B-1, C-2, D-8, and E-16.

A. Yes.

Q. Now, have you the original letter that was given you by Mr. Pollia on the night of August 29, that was the night that you prepared this inventory that he was to go to Los Angeles.

A. That is in evidence, Mr. Doyle.

Mr. Doyle: The original of August 29?

Mr. Harloe: Yes.

(Testimony of Arthur F. Snyder.)

Mr. Doyle: Q. What were the circumstances under which Mr. Pollia brought this letter of August 29 to you, which is Plaintiff's Exhibit 11?

A. That was the statement referred to in my testimony when Mr. Kalte and I were in the office, and that was the first information we had that we were understood to pay for all the work in the pits.

Q. That was less payment No. 1?

A. Yes.

Q. And less payment No. 2 of \$4737.49?

A. Yes.

Q. That was the letter you could not find yesterday and you [167] found in your file this morning?

A. Yes.

Q. Then you have this extra work order \$208, and the item \$165, and \$1760, corresponding to the bill of particulars which was submitted to you, which you subsequently examined?

A. I believe that is correct.

Q. You will observe in the letter Mr. Pollia gave you of August 29, 1940, that he stated complete work in pits A, B, C, D, and E?

A. That is correct.

Q. And item 2 of the contract says, "up to the pits."

The Court: That is in evidence.

Mr. Doyle: That is true.

A. Would you read that part?

Mr. Harloe: The contract says up to the pits.

Mr. Doyle: Q. In other words, Mr. Snyder,

(Testimony of Arthur F. Snyder.)

Plaintiff's Exhibit 7, the letter of August 29, 1940, covers the pits by letter and number, as in the contract to the pits by letter and number in the original contract of May 28, 1940?

A. The items in the letter of August 29 refer to the same pits that are referred to in the contract of May 28, if that is what you mean.

Q. And show extra charges for that work upon Mr. Pollia's statement?

The Court: Don't the letters speak for themselves?

Mr. Doyle: Yes. Thank you very much. That is all. No further questions.

Redirect Examination

Mr. Harloe: Q. Mr. Doyle has examined you at great length with reference to work orders 273 and 274, as to what they applied to. A. Yes.

Q. Work Orders 273 and 274 applied to Pit F, as designated on the plans and specifications, did it?

A. Yes. [168]

Q. And pit F was never at any time mentioned in the contract with Mr. Pollia?

A. Pit F was not mentioned.

Q. So, therefore, any work that might have been done by Mr. Pollia under any order was work that was never contemplated in the contract, whether it was in or out of the pit?

A. That is right.

Q. It was all extra work? A. Yes.

Q. In answer to a question this morning by me

(Testimony of Arthur F. Snyder.)

as to A. R. Reid & Company, Mr. Snyder, I want to call your attention to this, A. R. Reid & Company wrapped certain pipe and joints on this job for Mr. Pollia? A. Yes.

Q. Did A. R. Reid & Company furnish the material, also, for the wrapping of this pipe on the 120 feet of pipe you spoke of?

A. I am quite sure they did.

Q. The amount of A. R. Reid & Company's bill, as set forth in the Answer, was the sum of \$487.52?

A. Yes.

Q. You caused that amount to be paid to A. R. Reid? A. That is right.

Q. You also caused the amount of \$44.15 to be paid to the Western Crane Company?

A. I do not believe that bill was ever settled, Mr. Harloe, that particular one of \$44.15. I am not sure about that. I think that amount is still in default to the Western Crane Company.

Q. You think that is still in default to the Western Crane Company? A. Yes.

Q. The Thomas Welding Company, \$182.50.

A. Yes, we paid that.

Q. The E. K. Wood Lumber Company, \$4.82.

A. I believe the \$4.82 is in default.

Q. The \$4.82 is still due? A. Yes.

Q. J. Catucci, \$722.21.

A. \$746.59 is what we actually paid.

Q. There was a change in this bill, and it figured up to that [169] amount. Those amounts were paid by you? A. Paid by Flotation Systems.

(Testimony of Arthur F. Snyder.)

Q. And an assignment taken to the Flotation Systems? A. That is correct.

Q. Now, Mr. Snyder, with reference to the Shanmac Company, did you ever have any conversation with Mr. Shannon or Mr. Mackie, who constituted this Shanmac Company, with reference to work on the Flotation Systems job? A. Yes.

Q. And when did that occur?

Mr. Doyle: Mr. Harloe, I presume in the interest of time you are directing this examination relative to the complaint in intervention, and I think Mr. Stark ought to be here when that is done. In so far as we are concerned, we object to it.

The Court: I do not understand.

Mr. Harloe: Mr. Doyle calls my attention to the fact that I am addressing this line of questions to Mr. Snyder relative to the complaint in intervention by Mr. Stark for Shanmac Company, and I believe, properly speaking, that Mr. Stark should be here when that testimony is introduced.

Q. Mr. Snyder, attached to the item are certain items, as follows, which were paid by Flotation Systems: The first item there is, "20 hose reels, cost of installation \$150." Are those hose reels as set forth in the Answer as a set-off the same hose reels that you spoke about that were not installed by Mr. Pollia by reason of the fact that the equipment was not available out there, and they were subsequently installed by the Flotation Systems?

A. Yes.

(Testimony of Arthur F. Snyder.)

Q. Now, the charge in the bill of particulars on that account is for the actual installing of those, and it gives no credit for not installing them, is that so? A. That is correct. [170]

Q. The next item is "50 pounds of lead purchased June 29, 1940 at 4 cents a pound, \$2. Moving rock at boathouse with Bigge crane July 10, crane 2 hours at \$6, \$12, crane operator 2 hours at \$1.67, \$3.33, crane oiler 2 hours at \$1.17, \$2.33," making a total of \$17.66. Was that paid by Flotation Systems? A. Yes.

Q. Now, was that part of the work that should have been done by Mr. Pollia?

A. The crane work, Mr. Harloe, you are referring to?

Q. Yes.

A. This crane work was done by equipment we were renting for work on another job that Mr. Pollia was doing.

Q. Then the next item, "Moving rock at boat-house with Western crane, August 19"—

Mr. Doyle: If your Honor please, in view of the last answer of the witness, the plaintiff at this time will move to strike the item contained in the Answer and the testimony of the witness for the purpose of showing a charge here by the defendant against Mr. Pollia for other work that he was doing. This may be a set-off on another cause of action that the Flotation may have against Mr. Pollia, but there is no such thing as a set-off for

(Testimony of Arthur F. Snyder.)

any work that the corporation does for Mr. Pollia that is not in the contract before the Court.

Mr. Harloe: The witness has answered that this was work contemplated by the contract.

The Court: I did not understand that this work did not apply to the contract.

Mr. Harloe: I will withdraw my last question and go back to that. The first question is moving rock at boathouse with Bigge crane, on July 10.

A. Yes.

Q. What does that refer to?

A. That refers to a job that Mr. [171] Pollia used the crane on, on which we paid the rental, and I do believe he used it another job not on the contract.

Q. In other words, that refers to payments that the Flotation Systems made for the rental of a crane which was used by Mr. Pollia some place else?

A. That is correct.

Q. So that, as I understand it, there were two jobs going on at the same time, that is, the job you call the boathouse job, and Mr. Pollia was doing some work for the company that were doing that work?

A. That is right. Mr. Pollia was working on both jobs.

Q. What company was doing that?

A. The California Construction Company.

Q. In the doing of Mr. Pollia's work for the Flotation Systems, they were paying rental for the

(Testimony of Arthur F. Snyder.)

Bigge crane for doing work on their own job, were they?

A. I do not understand that question.

Q. What was the Bigge crane?

A. Well, we did considerable excavation work on the job, and for this excavation we hired Bigge's crane, and we paid rental on it at all times.

Q. You paid rental at all times? A. Yes.

Q. Then the Bigge crane that you were paying rental on was used by Mr. Pollia on this other job?

A. That is right.

Q. And you charged that against him?

A. We did, yes.

Mr. Doyle: To which we renew the motion, that the matter contained in the answer be stricken and the evidence be stricken, upon the ground that if there was a cross-complaint in this matter on behalf of the defendant against Mr. Pollia, the cross-complaint would rise out of the subject-matter of this particular matter, and not some other job.

The Court: We will take up that matter later in the argument. [172]

Mr. Harloe: Q. The same applies to the next item of \$17.66? The same applies.

Q. Then we have lumber purchased July 11th from E. K. Wood Lumber Company and charged to Flotation Systems, \$4.26. What was that?

A. Mr. Pollia purchased some lumber that he used in conjunction with the execution of this contract for us, and he didn't pay it; in fact, he

(Testimony of Arthur F. Snyder.)

had the bill charged to us directly—the E. K. Wood Lumber charged us directly for the lumber that our subcontractor used, and we paid the bill.

The Court: Didn't you go over all of these matters with this witness when he first took the stand?

Mr. Harloe: No, I did not, your Honor.

The Court: I thought you did.

Mr. Harloe: I did not go over this matter, I overlooked it.

Q. All of these items shown on Exhibit B to the answer, of which you have a list there, all were charged against Mr. Pollia on the Flotation job, except for the bill for the rent of the Bigge crane on the boathouse job that Mr. Pollia did?

A. Yes, all of those except the two items were for material or services or labor pertaining to the job in question.

Q. Now, coming, Mr. Snyder, to the letter of August 29, and the last five items there above the payroll, which reads, "Complete work in pits," and that sets forth the specific amount for each pit, have you added up the total of that amount?

A. I did at one time. I do not have that figure before me, here.

Q. It is a matter of addition. Those add up to \$2693.65. Is that right? A. That is right.

Q. That letter of August 29 was a letter submitted by Mr. Pollia, whereby he claimed payment for all work done in the pits?

A. That is correct. [173]

(Testimony of Arthur F. Snyder.)

Q. Now, the bill of particulars which is in evidence, have you a copy of it there?

A. I have it, yes.

Q. The bill of particulars sets forth for that same work how much?

A. \$4903.20, assuming that Mr. Pollia claims that he did all the work inside of the pits under our letter dated August 23, which has been discussed, which he contends is his authorization to do that work.

Mr. Harloe: I think that is all.

The Court: Any other questions?

Mr. Doyle: Yes. With the permission of the Court I would like to ask a question or two on cross examination.

Recross Examination

Mr. Doyle: Q. Mr. Snyder, you testified this morning about there being some trouble or some conference involving Mr. Pollia with Commander Siebert at the office about the delay in finishing the job, and the penalty.

A. There was a conference. We consumed a lot of time on that.

Q. As a matter of fact, there was never any penalty imposed upon anybody at any time, was there?

A. No, there was not, as a result of an occurrence that happened sometime after Mr. Pollia left the job. There was a large extension of the job by the Navy whereby we installed the entire

(Testimony of Arthur F. Snyder.)

additional system, and under the terms of the Naval contract the large extension of work abolished the penalty that we were subject to.

Q. Pursuing that question, in so far as the possibility of any penalty is concerned, there actually was none suffered by you?

A. As a result of actual circumstances, no, but at the time of this conference with Mr. Siebert we were subject to payment of penalty.

Q. Irrespective of being subject to a penalty, none was ever [174] levied or suffered?

A. Through circumstances occurring it made it unnecessary for us to pay the penalty.

Q. Now, so far as the bill of particulars is concerned, with respect to the hose reels to be installed inside of the pits, you testified this morning that there were 10, of the value of \$20 each, that would be \$200.

A. There were 20 hose reels at \$10.

Q. That would be \$200? A. Yes.

Q. The document that you were examined on by Mr. Harloe has \$150, which is correct?

A. I noticed that. As I remember subsequent estimates, we revised that; I will say in all fairness that \$150 is correct.

Q. In the bill of particulars this morning you questioned an item of a rental of cranes as being at \$8 an hour instead of \$7. Do you recall that?

A. Yes, if you will look at this bill that Mr. Pollia presented us on August 7, this same item

(Testimony of Arthur F. Snyder.)

appears on this bill at \$7 an hour. I have it right here.

Q. You have got a bill there on his stationery of August 1, 1940?

A. I am referring to the bill of August 29, 1940.

Q. That was the document that you based your inventory upon, or referred to in making up the inventory?

A. That is the document I referred to.

Q. That shows \$7 an hour? A. It does.

Q. This morning you testified that on the bill of particulars, instead of it being \$164, it should be \$142.50? A. I believe that is correct.

Q. The same type of equipment upon the bill of particulars, is that the same type of equipment that you were billing to Mr. Pollia in Exhibit B of the Answer? A. No.

Q. Similar equipment?

A. Similar equipment, but not the same. [175]

Q. Is there any difference in the rate per hour charged?

A. No. The machine that we allowed Mr. Pollia to use I believe was a larger machine than the one he rented to us.

Q. Is it comparable in price? A. Yes.

Q. The machine that Mr. Pollia was using and the machine that you rented to him, was that the machine and operator? A. Yes.

Q. And yet on your Exhibit B to your answer—we are charging \$7 in the bill of particulars and

(Testimony of Arthur F. Snyder.)

yet in your exhibit you have the rental of the crane, operator and oiler in the amount of \$8.84 an hour, for the same type of equipment.

A. You are adding time for the oiler?

Q. Yes.

A. This crane that we rented Mr. Pollia was a large derrick crane; the equipment was similar in purpose, but there was considerable variation in the rental paid. This is the bill for the operator's time, and the oiler's time, exactly what we paid for it. Mr. Pollia's charge against us for the use of his crane is based upon what he told me, which is substantiated by this bill which he presented us on August 29.

Q. What about the other item of \$404 for the equipment, in Mr. Pollia's bill of particulars? In other words, you testified that \$404 should be at the rate of \$7, multiplied by the number of hours, which would bring it to \$353.50.

A. That is right.

Q. Did Mr. Pollia give you the number of hours that he used that equipment?

A. I don't know whether he gave it to me or whether I calculated it from this bill of particulars. I believe I had a record of it. I would have to go through my file, here, to some extent, to verify that, but I have no recollection of any discrepancy in the number of hours.

Q. Now, you have the last item mentioned here, "Estimated cost of replacing and repairing tools

(Testimony of Arthur F. Snyder.)

and equipment borrowed and [176] lost or damaged by employees of Pollia, \$100.'" A. Yes.

Q. What equipment was borrowed, damaged or lost? A. A great many tools.

Q. Name a few of them.

A. I will name a section of hose, which was worth \$50, that Mr. Pollia, through carelessness, ruined for us, made it of no value.

Q. In what respect?

A. That hose was a rigid hose, and he allowed one of his trucks to be run over it by careless employees, which made the hose useless.

Q. Did you see that act of carelessness or negligence? A. No.

Q. Who told you that?

A. Well, Mr. Ceriat.

Q. Was Mr. Pollia there when that statement was made?

A. Yes, they had quite an argument about it.

Q. Now, as a matter of fact, you were to deliver all the material on that job?

A. The material, but not tools.

Q. As a matter of fact, there was considerable delay in the forwarding of some of the material to the job, was there not?

A. Not a great deal. We expended every effort to get the material to Mr. Pollia as he needed it. As I said before, on the stand, we made several trips to town when he said he was short something.

Q. Isn't it true, Mr. Snyder, that Mr. Ceriat

(Testimony of Arthur F. Snyder.)

made two trips to Los Angeles in order to arrange for the delivery of material?

A. He made two trips to Los Angeles, as I recall, but I don't recall the particular purpose of his trips.

Q. You were in court yesterday and heard Mr. Ceriat testify he made two trips to Los Angeles to get material to come up here?

A. I heard him say that, but I don't know that is what he went to Los Angeles for.

Mr. Doyle: No further questions. [177]

The Court: Do you want to call any other witnesses?

Mr. Harloe: In so far as the defendant is concerned, that is its case, save and except as to the claim of the intervenor, the Shanmac Company, in the sum of \$1048, and I believe, in all fairness to Mr. Stark, who represents them—I want to put on a little testimony, but I think in all fairness to Mr. Stark he should be present, and I would respectfully request your Honor, that we take it up at your Honor's convenience, it will merely take about ten minutes, and I will notify Mr. Stark to be here for that purpose.

The Court: Will you have any other witnesses?

Mr. Doyle: Yes, your Honor. I might make this statement: When I originally discussed this matter with Mr. Harloe, I understood that the defendant would put on Mr. Kalte and Mr. Snyder. I therefore, on behalf of the plaintiff, move that

plaintiff be permitted to reopen his case to call Mr. Kalte as an adverse witness.

Mr. Harloe: There is no objection to that, unless you want me to call him. So that the record will be straight I will call Mr. Kalte.

FRED E. KALTE,

Called for the Defendants; Sworn.

Mr. Harloe: So far as the Flotation Systems is concerned, I have no purpose in calling him, but in the interest of time you may cross examine him as an adverse witness.

Cross Examination

Mr. Doyle: Q. What is your official capacity with the Flotation Systems, Inc., Mr. Kalte?

A. Vice-President.

Q. How long have you been so employed?

A. Ever since the [178] inception of the company; that was in August, 1939.

Q. In order to shorten this up, I understand that you originally came in contact with Mr. Pollia with reference to this job, with Mr. Ceriat, at the Navy Base at Alameda, around May 28, 1940?

A. Approximately that time, yes.

Q. Do you know, of your own knowledge, that he actually commenced that work before his contract of May 28, 1940 was signed?

A. None other than I received reports in the office.

(Testimony of Fred E. Kalte.)

Q. Did you see this contract dated May 28, 1940 when it was forwarded to your office by Mr. Ceriat?

A. I believe I did glance at it, I don't remember going over it very thoroughly. I turned it over to Mr. Henry.

Q. Did you, or anybody, make any suggestion about changes, or any of the contents in the letter?

A. No, not at that time, I never made any comment.

Q. Did you make or suggest any changes in the letter of May 27, 1940, at any time? A. Yes.

Q. Is it true that you made a suggestion about a revision to provide for the work inside of the pits?

A. I am sorry, I misunderstood your previous question.

Q. My question was directed to the point of suggested changes.

A. What date?

Q. I don't know, that is what I am trying to find out. When was the first time, if you recall, that you saw the letter of May 28, 1940?

A. You mean the letter that Mr. Ceriat wrote down to our office as to what Mr. Pollia would do?

Q. That is the letter I am talking about.

The Court: What is the number?

Mr. Doyle: Plaintiff's Exhibit 2.

A. It is funny, but I do not remember ever seeing that letter. [179]

(Testimony of Fred E. Kalte.)

Q. Did you ever write to Mr. Ceriat or anyone about any provisions to be put in any contract to be drawn? A. Yes, I did.

Q. Where is that letter?

A. That is the letter, the answer I wrote in answer to Mr. Ceriat's letter to our Mr. Henry.

Q. Then you had some idea about the negotiations with respect to a contract? A. Oh, yes.

Q. And as a result of that knowledge of the execution of a contract, you issued certain instructions to Mr. Ceriat? A. Yes.

Q. You were interested in it to be sure that the contract provided for the work inside of the pit?

A. Yes, in addition to all of the rest that was stated in the letter.

Q. You left it up to Mr. Ceriat to see that the work was done? A. Yes.

Q. Mr. Ceriat sent the letter of May 28, you took it and filed it?

A. I turned it over to Mr. Henry and it was filed.

Q. Who was Mr. Henry?

A. President of the Flotation Systems.

Q. As a matter of fact, you did read the contract, but did not review it very carefully?

A. That is right.

Q. And after you read it or glanced at it, you merely turned it over to Mr. Henry, and ultimately it went into the file in the ordinary course of business? A. That is right.

(Testimony of Fred E. Kalte.)

Q. Who was the first person to call your attention to the fact that there was some question about whether it was up to the pits or in the pits?

A. I believe it was Mr. Snyder.

Q. About when was that, with respect to the date of the execution on May 28, 1940?

A. I stayed over on business at the job, and Mr. Snyder told me, just exactly what date I can't remember, but it was shortly before Mr. Pollia came down with a bill.

Q. Shortly before Pollia came down with the bill?

A. Yes.

Q. As a matter of fact, Mr. Kalte, this is the situation: that [180] you were up here on some business, you were over to the job in Alameda?

A. Yes.

Q. And that was the first time that Mr. Snyder intimated or stated to you that there was some question about whether the work was up to the pits or inside of the pits?

A. That is right.

Q. That is right?

A. That is right.

Q. That was about the time that Mr. Pollia was going to ask for a payment on this job?

A. A little before.

Q. And you went back to Los Angeles?

A. That is right.

Q. And you instructed Mr. Snyder to prepare some kind of inventory or statement, so that you would know what could be done?

A. No.

Q. What happened?

(Testimony of Fred E. Kalte.)

A. When I found out that Mr. Pollia was trying to collect for all of the extra work in the pits, I just told Mr. Snyder I would have to talk it over, and I had to go down to Los Angeles to talk it over with Mr. Henry, and he pointed to the word "to".

Q. Who is "he"? A. Mr. Snyder.

Q. When you saw that word "to" you indicated you would have to go down and talk to Mr. Henry?

A. Yes.

Q. Nothing else happened?

A. At that time, no.

Q. You made some observation you would go down South and see if the original contract in that office was the same as the work contract in that office?

A. I wanted to talk with Mr. Henry.

Q. You went down to Los Angeles?

A. Yes.

Q. And Mr. Pollia finally appeared down there with this inventory and statement of August 29, 1940, or about that date?

A. All I saw was that he had a statement.

Q. Who?

A. Mr. Pollia presented me with a statement.

Q. Do you know what statement that is?

A. For all the charges [181] up to date.

Q. Do you know where that statement is?

A. I believe it is a matter of record.

Q. You mean the August 29th statement—you are referring, I take it, to Plaintiff's Exhibit 11?

A. Yes, I believe that is the one.

(Testimony of Fred E. Kalte.)

Q. Do you recall Mr. Pollia coming down to your office at Los Angeles with any document that was prepared by Mr. Snyder? A. Only this.

Q. That is all you recall?

A. That is all I recall.

Q. I will show you Plaintiff's Exhibit 11, the first item of which is, "Less Payment No. 1, \$7600," and "Less Payment No. 2, \$4737.49," and then the items in the third set of figures in the sum of \$7493.14. Is that correct?

Q. When Mr. Pollia came in that morning to your office in Los Angeles, tell us what transpired.

A. To the best of my knowledge, we went into Mr. Henry's office, Mr. Pollia and myself, and we talked with Mr. Pollia for a moment, and then we called in Mr. Ceriat, and we had a conversation.

Q. At the conversation would you please relate exactly, word for word, or the substance of what each party said?

A. This is just from memory.

Q. Your best recollection.

A. In the first place, I did not feel the job was completed, and Pollia was asking for more work than had actually been completed, and I did not feel that extra for the work for the fueling pits was due him. Mr. Henry made the remark that—I don't remember the exact words he used.

Q. That is all right, give us the substance.

A. The substance of it was that Mr. Pollia pulled a fast one, tried to pull a [182] fast one

(Testimony of Fred E. Kalte.)

over on us, and I said, "Who?" And he said "We three," he said Ceriat, myself and Mr. Henry. I had a talk with Mr. Henry, and we decided we would pay Mr. Pollia one thousand dollars on account until we could get a report of the job and see how much Mr. Pollia had done, and how much money was coming to him, by contacting our superintendent on the job, who was Mr. Snyder, and a check was written out and given to Mr. Pollia.

Q. You are going a little too fast for me. When Mr. Snyder showed you the contract in Alameda you left and went to Los Angeles? A. Yes.

Q. You went in and got your copy of the filed contract? A. Yes.

Q. When you saw the same wording in there you took the matter up with Mr. Henry?

A. Yes.

Q. And the two of you discussed the matter between yourselves? A. Yes.

Q. Mr. Pollia was not there at that time?

A. No.

Q. He came down one morning a very few days thereafter? A. Yes.

Q. And the three of you got together in conversation, as I understand it, and Mr. Henry made a suggestion that Mr. Pollia was pulling a fast one on Mr. Ceriat, Mr. Henry, and yourself?

A. That is right.

Q. You are going a little too fast. Was that all there was in the conversation?

(Testimony of Fred E. Kalte.)

A. I do not recall.

Q. How long did the conversation last?

A. Maybe about ten minutes.

Q. It did not take ten minutes merely to say somebody made the suggestion that Mr. Pollia was pulling a fast one. Give us more of the conversation.

A. Well, I said, personally, "It stinks."

Q. Anything else?

A. We did not agree on it, at all. That is, [183] Mr. Pollia had an idea, and our idea was a little different. Mr. Henry and I felt that the item——

Q. I am not asking what you felt. I am merely asking you what did you tell Mr. Pollia.

Mr. Harloe: Mr. Kalte, Mr. Doyle is trying to get your best recollection. If you cannot remember the words give him the substance as you remember it, just what took place. That is all you want.

A. The sum and substance of it was that we told Mr. Pollia we felt that we were being gypped out of this extra he wanted, it was supposed to be in the contract, that was the intent of the contract, to include that in it, and the substance of the conversation was the meaning of that contract. What further went on I don't know exactly, but Mr. Henry told me to give Mr. Pollia a check for \$1000.

Mr. Doyle: Q. At that point that you mentioned, Mr. Henry and yourself believed that the contract had that in contemplation, and having in mind that you felt that it stunk, and Mr. Henry's

(Testimony of Fred E. Kalte.)

statement you were having a fast one pulled on you, didn't you decline to make any payment to Mr. Pollia upon the ground that there was no meeting of the minds, that he was not entitled to it?

A. Not on those grounds, no.

Q. As a matter of fact, when you had that in mind, and Mr. Henry felt the way you testified he did, and you felt the way that you testified you did, as a matter of fact you issued a check for \$1000?

A. But that was below what we thought was coming to him on the original contract.

Q. Irrespective of that, notwithstanding that matter, you did issue a check for \$1000?

A. Yes.

Q. Isn't it true, also, that you told Mr. Pollia, or you thought [184] that for the moment Mr. Pollia was satisfied with \$1000? A. No.

Q. What did he say?

A. He wanted the rest of it right away.

Q. What did you tell him?

A. I told him we would not give it to him until we had checked up thoroughly and found out how much was coming to him.

Q. Then I take it he left?

A. No, he asked for a note.

Q. And he was willing to discount the note?

A. He did not say anything about discount.

Q. He asked for a note? A. Yes.

Q. Did he come back the following morning?

(Testimony of Fred E. Kalte.)

A. I think it was all closed up that day.

Q. Isn't it true, Mr. Kalte, toward the end of the conversation between Mr. Henry, Mr. Pollia and yourself, it was agreed that you would finally pay it? A. No.

Q. Do you recall your deposition being taken in my office at San Francisco on October 15, 1941?

A. Yes.

Mr. Doyle: Have you got your copy of the deposition, Mr. Harloe?

Mr. Harloe: No, I have not. Just show it to him.

Mr. Doyle: Q. I will ask you to read——

The Court: Do you expect this witness to be here some time?

Mr. Harloe: Yes.

The Court: I think we will take our adjournment at this time. This case will be continued until Friday, the 20th, at 10:00 o'clock.

(An adjournment was here taken until Friday, February 20, 1942.) [185]

Friday, February 20, 1942

10:00 o'Clock A.M.

The Court: You may proceed.

FRED E. KALTE,

Recalled:

Cross-Examination
(resumed)

Mr. Doyle: Q. Mr. Kalte, when we adjourned Wednesday, you had testified that in the conversation in the company's office in Los Angeles, when Mr. Pollia was down there to get some money, that you thought the thing stunk, and you would look into it, is that right?

A. That is right.

Q. And you paid him some money that morning?

A. That is right.

Q. Then what did you tell him?

A. I don't remember the exact words, but I believe I said it looks like we are stuck, and we would have to pay it.

Q. Was there any debate about the idea, at all, or any words that passed between any of you—was there a friendly feeling?

A. I don't know as to that, I would not say.

Q. Isn't it true, Mr. Kalte, that toward the end of the discussion about Mr. Pollia's getting this money, and prior to Mr. Pollia leaving your office, didn't you take the initiative to phone another contractor in Los Angeles about getting Mr. Pollia a job on a United States field? Do you know Mr. Hummerdon?

A. Yes, I do.

(Testimony of Fred E. Kalte.)

Q. Do you recall to your mind that you took the initiative about getting together Mr. Pollia and Mr. Hummerdon on another job?

A. Yes, sometime previously to this.

Q. I am talking about the morning in Los Angeles.

A. I don't remember whether it was that morning or some other time.

Q. You wouldn't deny taking up the phone and calling Mr. Hummerdon? [186]

A. No, I won't deny that.

Q. And it is true when you were in Los Angeles the morning of this conversation, that, as you said, you felt the letter was written in such a way that you would have to pay Mr. Pollia for the work in the pits?

Mr. Harloe: I object to the form of the question.

Mr. Doyle: I will change the question.

Q. Why did you say that you agreed to put up money under the mistaken idea that the money was due him?

Mr. Harloe: He did not say that.

Mr. Doyle: Q. Did you not know at that time about the money being due Mr. Pollia when he was in Los Angeles?

Mr. Harloe: Money due him for what?

Mr. Doyle: Q. Did you have any mistaken idea, or any doubt, whatsoever, upon the statement that Mr. Pollia brought in to you, which was prepared

(Testimony of Fred E. Kalte.)

by Mr. Snyder, in your office in Los Angeles about Mr. Pollia being entitled to any part of the money disclosed in that statement?

A. I did not see any statement from Mr. Snyder.

Q. Did you have any doubt in your mind, at all, or a mistaken idea about Mr. Pollia being entitled to any of the money that he was claiming was due him in Los Angeles?

A. Personally, I did not think it was due him.

Q. What did you give him the \$1000 for?

A. We had not paid him the full amount of the contract yet, the original amount.

Q. How much was due upon the original contract? A. I don't know, exactly.

Q. Isn't it true that in looking over the agreement, it was your opinion at that time that Mr. Pollia did not have to do the work in the pits—I am talking about the morning in Los Angeles. [187]

A. I would say that according to the way I read the agreement it could be interpreted that way, but, personally, I did not think it was.

Q. The morning in Los Angeles, in any event, was the second time that you had paid any particular attention to the contract?

A. Yes, I would say that.

Q. And the first time was when Mr. Snyder called it to your attention up on the job?

A. That is right.

Q. When Mr. Snyder, as you say, originally

(Testimony of Fred E. Kalte.)

called your attention to this so-called ambiguity or discrepancy at the Base at Alameda, as to whether or not the work was up to the pits, or in the pits, when you saw the copy of the contract at the office why didn't you talk to Mr. Pollia about it the very first moment it was called to your attention?

A. I did right there, I am quite sure right in the office.

Q. To Mr. Pollia?

A. I don't remember exactly who were there, if Mr. Pollia was there that afternoon.

Q. Let me reframe the question and make it very definite, if I may. Mr. Snyder originally called your attention to the fact that Mr. Pollia was asking for payment for work that he, Mr. Pollia, had done in the pits. Is that true?

A. That is right.

Q. And when Mr. Snyder called that point to your attention, Mr. Snyder and yourself reached into the office files at the office and got this contract of May 28, 1940?

A. That is true.

Q. And at that time you saw the words in the contract of May 28, 1940, "to the pit"?

A. That is right.

Q. Now, at that time and place, the very first moment that it was ever called to your attention, did you at that time and place discuss the matter with Mr. Pollia?

A. Truthfully, I cannot say whether I did, or not. [188]

(Testimony of Fred E. Kalte.)

Q. Then I take it that the first recollection that you have of discussing that point with Mr. Pollia was in Los Angeles?

A. I can say that we did at that time, but prior to it I could not say.

Q. When Mr. Snyder called your attention to this wording of the contract, was Mr. Pollia on the job at the Base at that time—did you see him on the job at the base at that time?

A. I was on the job so many times I don't remember he was there at that time, or not.

Q. Well, there was nothing to prevent you in any way from taking it up with Mr. Pollia the very first moment that that question was presented to you, was there? A. No.

Q. What about the work? Did you go out and dig pits, yourself? A. No, I did not.

Q. Do you know whether or not there was any work that had to be done in the pits at that time, or how far the work had advanced, or what stage it was in?

A. Oh, yes, the job was pretty well along.

Q. But it had not been completed?

A. No, it had not been completed.

Q. When Mr. Snyder called your attention to the fact did you go out and personally examine the work in the pits? A. Not personally.

Q. Mr. Snyder had informed you that the work was pretty far advanced?

A. Yes, he was our superintendent on the job, and he reported to me.

(Testimony of Fred E. Kalte.)

Q. When Mr. Snyder told you the work was 'pretty far advanced in the pit, and you had an idea that Mr. Pollia was around there, or could be found or gotten in touch with, you did not do anything about it?

A. No, not that I recollect. [189]

Q. The next thing you did was to leave San Francisco and go down to Los Angeles?

A. That is right.

Q. So, then, when this was called to your attention by Mr. Snyder, as to work in the pits, or to the pits, you knew at that time that considerable work had been done by Mr. Pollia in the pits, and yet you let Mr. Pollia continue to do the work, and said nothing about it?

Mr. Harloe: I object to that as argumentative, and not asking any question. Ask him what he did.

The Court: I think the last question should be reframed.

Mr. Doyle: Yes.

Q. When Mr. Snyder called your attention to the wording of the contract, Mr. Snyder advised you that considerable work had been done by Mr. Pollia in the pits, you went to Los Angeles?

A. Yes.

Q. When you left the Base at Alameda, it is a fact, is it not, that you did not communicate with Mr. Pollia about the wording of the contract?

A. No, I do not think I did.

Q. When you left Alameda, did you instruct Mr. Snyder to tell Mr. Pollia to hold up the job?

(Testimony of Fred E. Kalte.)

A. No, I did not.

Q. So that you left San Francisco for Los Angeles and let Mr. Pollia continue to do work when there was some question in your mind about the situation, isn't that true?

Mr. Harloe: I object to the form of that question.

Mr. Doyle: I will reframe it.

Q. You went to Los Angeles, and took no steps to stop Mr. Pollia from continuing to do that work?

A. Certainly not, the job had to be completed.

Q. Is that the only reason you let it go?

A. The only reason I can think of right now.

Q. Isn't it true, Mr. Kalte, that under the contract you were to [190] supply all material to Mr. Pollia?

A. Yes, that was the understanding.

Q. Isn't it true that under the contract there was considerable delay—Take out the word “considerable”—was there some delay in your forwarding some of the material to the Base for Mr. Pollia to work on?

A. There was a delay in receiving material.

Q. Isn't it true that Mr. Ceriat, who was construction superintendent at that time, had to go to Los Angeles to get supplies for Mr. Pollia, so that he could do the work?

The Court: If he knows.

A. No, I don't know if he went to Los Angeles to look for any material.

(Testimony of Fred E. Kalte.)

Mr. Doyle: Q. Did Mr. Ceriat ever talk to you in Los Angeles about getting material up to Mr. Pollia?

A. Well, he did not come down purposely for that. When he came down on other business he took that up with me.

Q. At least, Mr. Ceriat talked to you about getting material up to the Base so that Mr. Pollia could do his work? A. Yes.

Q. You do not recall any other reason, other than what you have said, that the work had to be completed, as to why you did not stop Mr. Pollia as soon as you found out about this trouble with the contract? A. That is all I recall.

Q. In any event, you permitted Mr. Pollia to do all the work, either under the original contract or the extra work orders, with the exception of the installation of the hose reels in the pits?

Mr. Harloe: I object to that question. The question is what he did.

Mr. Doyle: Q. Isn't it a fact—isn't this the truth and the fact, Mr. Kalte, that you permitted Mr. Pollia to continue to [191] do the work, either under your original contract, or the extra work orders, and he did do it, save and except the installation of the hose reels in the pits?

Mr. Harloe: If your Honor please, I object to that.

The Court: I think that question has been asked and answered a couple of times already.

(Testimony of Fred E. Kalte.)

Mr. Doyle: Q. Isn't it true, Mr. Kalte, that the first time you ever talked to Mr. Pollia about any wording of the contract was after you had obtained legal advice?

A. I think that was the only time I did talk to him about any discrepancy.

Q. When was it, with reference to the time that you obtained this legal advice that you first talked to Mr. Pollia about the discrepancy?

A. I think it was at Mr. Harloe's office.

Q. The fact is, when Mr. Pollia did not get the balance of the money he came back to San Francisco from Los Angeles?

A. I think that is where he went.

Q. Did you obtain legal advice before Mr. Pollia went to Los Angeles, or after? A. After.

Q. Did you come up to San Francisco then?

A. No, I did not.

Q. You received some legal advice in some manner, did you? A. That is right.

Q. And then you communicated with Mr. Pollia about the matter? A. I believe, legally, yes.

Q. About when was that?

A. After he presented his bill.

Q. Can you give me the approximate date?

A. I don't know whether it was in September or October. I don't remember the date.

Q. Mr. Kalte, isn't it true that Mr. Pollia had completed all of the work on the Base, with the exception of the installation of the hose reels in the

(Testimony of Fred E. Kalte.)

pits before you had obtained any legal advice, or communicated that advice to Mr. Pollia?

A. I could [192] not answer that question, I don't know.

The Court: Let me ask you, what do you mean by the word "Base"?

Mr. Doyle: The Base at Alameda. I did not use the full wording, I tried to shorten it up.

Q. You understood, when I said "Base," I was talking about the Alameda Air Base?

A. Yes, I understood that.

Mr. Doyle: No further questions.

Redirect Examination

Mr. Harloe: Q. The negotiations, as you understood, or as I understood you to testify, for the purpose of entering into this contract, were carried on by Mr. Ceriat and Mr. Pollia?

A. That is right.

Q. And Defendant's Exhibit B was a letter addressed to Flotation Systems from Mr. Ceriat prior to the entering into of the contract, was it not?

A. I never saw this prior to the contract.

Q. You never saw that letter?

A. Pardon me, yes, this one I did.

Q. This letter is dated May 23, 1940.

A. Yes.

Q. Did you read that letter and answer it?

A. I did, yes.

Q. Did you, personally, or Mr. Henry?

A. I, personally, answered it.

(Testimony of Fred E. Kalte.)

Q. You, personally, answered the letter?

A. Yes.

Q. And Defendant's Exhibit C, dated May 24, is this the answer that you wrote to Mr. Ceriat?

A. Yes, that is the letter I wrote in reply to this.

Q. In reply to that one? A. Yes.

Q. The letter that you received from Mr. Ceriat, had, among other things, the paragraph, "Install equipment in all pits except the feuling pits," and then named the pits. In your answer [193] thereto you mentioned the fact that he was to do certain other things, as welding and wrapping of the welding fittings and painting of pipe.

A. That is right.

Q. After that contract was received by you you were of the opinion that the contract contained all of the provisions that were mentioned in that letter, and your answer to it, were you?

A. I was of that opinion, yes.

Q. And the first time that any question arose in your mind as to whether the contract did or did not contain those provisions was when Mr. Pollia came down and demanded payment for work done in the pits? A. No.

Q. It was not?

A. The first time was when Mr. Snyder, at the Air Base, drew my attention to it.

Q. The first time was when Mr. Snyder informed you at the Air Base that Mr. Pollia had told him that he was not to do the work in the pits at that time? A. That is right.

(Testimony of Fred E. Kalte.)

Q. At that time you were still of the opinion that the contract provided that Mr. Pollia should do all the work in the pits? A. Yes.

Q. Did you, in any conversation with Mr. Pollia, after that question of doing the work in the pits arose, ever agree that he did or did not have to do that work under that contract? A. No.

Q. You did pay him \$1000 when he went down to Los Angeles, didn't you? A. Yes.

Q. And it was pursuant to the letter of August 29, Defendant's Exhibit 7?

A. Is that Pollia's letter?

Q. Yes, that is the bill that he submitted to you.

A. Yes.

Q. The charge for work in the pits only comprised a small part of this demand, didn't it?

A. That is right. [194]

Q. And you paid him because you knew the Flotation was indebted to him more than \$1000 for work actually done, excluding any question of work in the pits? A. That is right.

Recross Examination

Mr. Doyle: Q. Mr. Kalte, do you, of your own knowledge, know that the Flotation Systems actually paid Mr. Pollia for work that he did in the pits in the month of July?

Mr. Harloe: Just a minute, the witness has answered that he paid \$1000 on that letter of Mr. Pollia, and the bill speaks for itself, and it contains items other than the work done in the pits,

(Testimony of Fred E. Kalte.)

and they paid him \$1000 on account of the work that they believed that he was entitled to, excluding any question of the work that was done in the pits, and I do not think that is a fair question.

The Court: If he knows of his own knowledge he may answer the question.

A. Might I make this statement?

Q. Answer the question, and then make any explanation you want to.

A. Yes. We did pay for work done in the pits, because that was in the contract, and we paid him on account of the contract.

Mr. Doyle: Q. When you say that was in his contract, do you refer to the original contract?

A. To the original contract.

Q. Now, Mr. Kalte, in view of your last answer, when you say Mr. Ceriat sent down the first suggestion in letter form of an agreement between the Flotation and Mr. Pollia, you suggested some changes? A. Yes.

Q. You suggested some additions?

A. That is right.

Q. And you observed any proposed contract closely enough at that time to take up the question of an addition, did you?

A. That is right. [195]

Q. When Mr. Pollia's letter of May 28, 1940 came back signed by Mr. Pollia and Mr. Ceriat, did you at any time from that time on read that contract? A. I hastily glanced over it.

(Testimony of Fred E. Kalte.)

Q. Merely filed it, is that right?

A. Mr. Ceriat was our representative up on the job, and he had business experience in that line, and I felt he was very capable of drawing up a contract with Mr. Pollia.

Q. You did review the original proposed agreement and suggest an addition?

A. Yes, that is right.

Q. And you did review the contract of May 28, 1940, and filed it? A. Yes.

Q. Now, in making payments of accounts payable in your organization, do you sign any of the checks? A. I do.

Q. Did you observe in the course of time from May 28, 1940 to August 29, 1940, when Mr. Pollia came down to get some money, the checks that had been issued to Mr. Pollia in the interim?

A. Well, specifically, I did not pay special attention to those.

Q. At least, you signed the checks?

A. I did.

Q. And you knew the original contract was \$16,040? A. Yes.

Q. And as you paid checks from May until August you were aware of the fact that there were some pretty good-sized checks in there?

A. That is right.

Q. Did the thought ever occur to you that you were beyond the \$16,000 figure?

A. No, we have an auditing department that takes care of all of that.

(Testimony of Fred E. Kalte.)

Q. The auditing department buys the material, do they not? A. No, they do not.

Q. I mean your purchasing department.

A. That is right.

Q. And your auditing department, in due course of business arranges for payment of material that you purchase? A. It does. [196]

Q. What system is there in the organization for the charging of original contracts on your books?

Mr. Harloe: Now, if your Honor please, I do not want to object, but I cannot see any relevancy or materiality, or what bearing that has on the issues before your Honor, and I object to the question as immaterial, irrelevant, and incompetent.

Mr. Doyle: I will withdraw the question.

Q. Do you recall that the purchase order was set up in your books at \$143,000?

A. I don't know whether it has ever been set up, or not.

Q. Did you ever set up the total amount of the main contract in your books?

A. I do not set up anything on the books.

Q. Do you ever check your books, personally?

A. I do not.

Q. Do you ever see any of the purchases for material that are being made for the job?

A. I do, yes.

Q. When you signed the purchase orders for materials under your order numbers 273, 274, 280 and 1207, what did you think you were purchasing?

(Testimony of Fred E. Kalte.)

Mr. Harloe: I object to that as immaterial. The contract provides that the Flotation Systems shall furnish the material, therefore we object to the question on the ground it does not make any difference where they purchased or how they purchased.

The Court: He may answer.

A. Just what it states on the order.

Mr. Doyle: Q. Will you read what it says?

A. "Install equipment in fueling pits, complete, tested and ready for operation at the Naval Air Station, Alameda, California, in accordance with specifications 9505, 10 pits in all. All equipment that is to be permanently installed will be furnished by us, tools and equipment to be furnished by you. Price to [197] be paid for this service is \$77 per pit. This does not include electrical work."

Mr. Harloe: I move to strike out the answer as not pertinent to any issue before the Court.

The Court: For the present the motion will be denied.

Mr. Doyle: Q. On Orders 273 and 274, your name is on there? A. That is right.

Q. Was it your idea that Orders 273 and 274 were actually purchases of material under Order No. 1431, which was the original contract of \$16,040?

Mr. Harloe: I object to that as argumentative, as well as calling for the conclusion and opinion of the witness. The papers speak for themselves.

The Court: The papers speak for themselves. as far as that is concerned.

(Testimony of Fred E. Kalte.)

Mr. Doyle: Q. Since the adjournment, have you looked for or endeavored to find the inventory that has been testified to that Mr. Snyder prepared before Mr. Pollia went to Los Angeles?

A. I have three of them in my file, and evidently they are not the ones that Mr. Pollia said they are.

Mr. Doyle: That is all.

Mr. Harloe: No further questions.

The Court: I do not know whether this witness will be prepared to answer this question, or whether it has been shown, but at the date of the contract what work was then known which had to be done within the pit, itself? Is that covered by the evidence?

Mr. Harloe: I think we can clear that up. I will put Mr. Snyder on. He is more familiar with that than Mr. Kalte.

The Court: I was wondering if it had been covered. [198]

Mr. Doyle: Q. Upon the occasion of any of your visits to the Navy Air Base at Alameda, upon any occasion, did you ever, personally, go out and observe the nature and the progress of the work?

A. I did, yes.

Q. Did you ever see Mr. Pollia out on the job?

A. Yes.

Q. Did you ever see Mr. Pollia in the pits?

A. Well, I can't remember any specific instance of seeing him in the pits. I saw his man in the pits.

Q. What was he doing?

A. Fitting pipes.

(Testimony of Fred E. Kalte.)

Q. What kind of pipes?

A. Steel pipe, standard fittings.

Q. Did you ever talk to Mr. Pollia about the work that his men were doing in the pits upon any occasion that you ever saw them working in the pits?

A. Not specifically, that I remember. Our superintendent took all that matter up with Mr. Pollia. I just talked to him as a matter of acquaintance.

Q. Let me put it this way: When you were in Alameda a few days before August 29, 1940, what, in your opinion, was the amount of work that had been done by Mr. Pollia at that time, either outside of the pits or in the pits?

A. I could not answer that question.

Mr. Doyle: No further questions.

Mr. Harloe: Q. In any event, you never signed any extra work order for the installation of the fittings inside of the pits? A. No.

Mr. Harloe: That is all.

ARTHUR T. SNYDER,

Recalled for Defendant; (Previously sworn.)

Mr. Harloe: Q. Mr. Snyder, recalling that this contract entered into between Mr. Pollia and the Flotation Systems is [199] dated May 28, 1940; at that time the Flotation Systems had already entered

(Testimony of Arthur T. Snyder.)

into a contract with the United States Government for the installation of this work? A. Yes.

Q. And you had in your possession complete plans and specifications for the installation of that project?

A. That is correct, the plans and specifications.

Q. It was known as the gasoline distribution system?

A. It was known as the gasoline fueling and distribution system at Navy Air Station, Alameda, California. I believe that is the correct title.

Q. But all of this work that was contracted for between Mr. Pollia and the Flotation Systems, you had already contracted to do that for the United States Government? A. Yes, that is correct.

Q. In accordance with the plans and specifications? A. Yes.

Mr. Harloe: Is that what your Honor wanted?

The Court: The question that I suggested was as to what actual work had already been constructed, in addition to what would be required in the pits.

Mr. Harloe: Q. Had Flotation Systems done any work on the pits at the time that this contract had been entered into by Mr. Pollia?

A. Not pipe fitting work, pipe laying or the installation of any pipe fittings. We had installed the gasoline storage tanks, or were installing them under the ground, and we were also building these various concrete pits, but we had not done any pipe

(Testimony of Arthur T. Snyder.)

fitting work, at all, practically had no pipe fitters or tools on the job on the date the May 28th contract was entered into with Mr. Pollia.

Q. With reference to any extra work that was done, that was changed or designed by the authorities after Mr. Pollia had entered into the contract?

A. Well, our original plans and speci- [200] fications, as furnished by the Navy, showed in considerable detail all of the pipe, the standard fittings, the special fittings, and the connections inside of the pit, and the pipe work outside of the pit, and subsequent changes, change orders received from the Navy.

Q. But none of those changes had been received by you prior to the date that Mr. Pollia entered into the contract with the Flotation?

A. I do not believe so, Mr. Harloe. There may have been some discussion with the Navy engineers, but I am reasonably sure that none of the changes were a matter that had been definitely decided upon.

Q. Now, Mr. Snyder, going back to the Shanmac Company, you saw the cranes, or whatever the name of the equipment is that the Shanmac Company used there? A. Yes.

Q. They also were working for the Central Construction Company, were they not?

Mr. Stark: Who was?

Mr. Harloe: The Shanmac Company.

A. Mr. Harloe, if I may clarify the question, Mr. Pollia, as I understand, had a contract with the

(Testimony of Arthur T. Snyder.)

Central California Construction Company, that is the proper name, who had a contract with the Navy for the construction of the boathouse adjacent to our job, and the equipment in question, owned by Shanmac Company, was being used at various times on both the boathouse job and the Flotation Systems job.

Q. Do you know whether or not in any one day this equipment was used on both the Flotation Systems job and the boathouse job?

A. I would not want to say positively on that, I believe that it was, but my memory is not good enough to say absolutely.

Q. After this controversy arose between Mr. Pollia and the [201] Flotation Systems, you had many conversations with somebody connected with the Shanmac Company?

A. Yes, Mr. George Shannon and also Mrs. George Shannon.

Q. Mr. and Mrs. George Shannon?

A. Yes.

Q. Did you have conversations with them with respect to the amount of work that they had performed with Mr. Pollia on the Flotation Systems project?

A. Yes, numerous times.

Q. You had conversations with them relative to the amount of work that they had performed for Mr. Pollia on the boathouse job?

A. That is right.

Q. Did you ask them to give you an account, or

(Testimony of Arthur T. Snyder.)

a description of the amount of work that they had done for you, or Flotation Systems, on your project? A. Yes.

Q. And were they able to do it?

A. No. I asked them several times to furnish me with an itemized, that is, the detail of the amount of work done for us, as distinguished from the amount of work done for the Central California Construction Company, and I said the Flotation Systems would stand responsible for whatever share of the work was done on our project.

Q. Were they ever, at any time, able to give you the amount of the work that was done, a statement of the amount of work that was done on the Flotation Systems job?

A. No, I never received any such segregation of the time.

Mr. Stark: I call your attention to the fact that your question was were they ever able to give it to you, and the answer was they never did.

Mr. Harloe: Withdraw that question.

Q. Did they ever give you one?

A. No, they did not.

Q. During the course of the work that was performed by Shanmac on the Flotation job, payments were made to Shanmac Company for [202] work that had been done on the Flotation job, had they not?

A. Might I explain how the payments were made?

(Testimony of Arthur T. Snyder.)

Q. First, tell us whether they were, or were not.

A. The payments were made through Mr. Pollia to Mr. Shannon.

Q. The payments were made through Mr. Pollia to Mr. Shannon? A. Yes.

Q. How do you know that payments were made by Mr. Pollia to Mr. Shannon?

A. Because we had no assurance that Mr. Pollia would pay the bill, and in order to protect ourselves we made out our checks to the order of Mr. Pollia and had Mr. Pollia endorse the checks in the proper amount over to Mr. Shannon before we released them.

Q. So that Mr. Pollia endorsed the checks over to Mr. Shannon upon your making them out?

A. No, the checks were made out in this way. As I recall, prior to the time certain payments were made to Mr. Pollia we asked Mr. Shannon how much money he had coming; we also asked several other concerns how much money they had coming from Mr. Pollia, and in making out a payment to Mr. Pollia we had a number of checks made out, some of these checks being in the amount that was owing these various companies, and then the checks were sent out to him at Alameda and at my request Mr. Pollia endorsed them payable to the order of them.

Q. The checks that were requested to be made out to Andrew Pollia, the amount of those checks were predicated by you upon the amount that Mr. Shannon told you Mr. Pollia owed him at that time, is that correct? A. That is correct.

(Testimony of Arthur T. Snyder.)

Q. And you had the checks made for that amount? A. That is right.

Q. What did you do with them?

A. We typed on the back of them, "Pay to the order of Shanmac Company," and then requested Mr. [203] Pollia to endorse them on the back, which he did, whereupon I gave the check to Mr. Shannon, who, in turn, gave a receipt.

Q. I will show you two of those checks, one dated July 8, in the amount of \$695, and one of August 16, 1940 in the amount of \$1213.43, and ask you if those are the checks in question?

A. Yes, I recognize the checks, photostatic copies, I should say.

Mr. Harloe: I offer these checks in evidence, with reference to the intervenor.

(The two checks were marked "Defendant's Exhibit E.")

Q. You were continuously on the project, there, as the work was progressing, were you not?

A. Yes.

Q. You had a pretty good knowledge of the amount of work which Mr. Shannon or the Shanmac Company did on the Flotation job?

A. Fairly well, yes, although I might say that I did not keep actual time on it. The transaction was between Mr. Shannon and Mr. Pollia; I did not keep a bookkeeping record of how many hours Mr. Shannon's machine worked for Mr. Pollia, or for the Central California Construction Company.

(Testimony of Arthur T. Snyder.)

Q. Was it or was it not your opinion that when the job was finished that the Flotation had practically paid to Mr. Pollia for Mr. Shannon's account practically all of the work that was done on the Flotation Systems by Shanmac Company?

Mr. Stark: That is objected to.

Mr. Harloe: Q. What is your opinion about the number of hours that the machine operated on this job?

Mr. Stark: That is objected to.

The Court: The objection is sustained.

Mr. Harloe: That is all.

Cross Examination

Mr. Stark: Q. Mr. Snyder, were you in charge of the job at [204] Alameda?

A. Not at the beginning, Mr. Stark.

Q. When did you go on the job?

A. Approximately March 15, 1940.

Q. Were you in charge on the 1st day of June, 1940? A. No.

Q. What was your official position?

A. Engineer.

Q. You had nothing to do with the time keeping, did you?

A. Yes. I explained in my former testimony that I had just been employed by the company as an engineer, and in order to acquaint myself with the methods of the company and the work they were doing, I was keeping the field office records during the period you refer to.

(Testimony of Arthur T. Snyder.)

Q. Money earned by Mr. Pollia under his contract was paid from time to time progressively?

A. Yes, there were three separate payments, as I remember, at the end of three consecutive months.

Q. This check, dated July 8, for \$695, up to what date was that a payment to Pollia?

A. That was a part of the payment for work completed by him up to July 1.

Q. And the check for \$1213.43, dated August 16, would be payment up to what date?

A. That would be for work completed up to August 1.

Q. Do you know whether or not the Shanmac machine worked on the Central California Construction job on June 18?

A. That is a little more than my memory is capable of. I saw the machine working from time to time, but it is impossible to remember the exact date.

Q. Your testimony is that you have no recollection now of any particular day or hours that the Shanmac Company machine worked on the Central California Construction Company job as distinguished from the Flotation Systems job?

A. No specific dates or specific hours, no. It was working there a large percentage of the time, for what dates and what hours, specifically, I could [205] not say.

Q. Is it not true, Mr. Snyder, that the Shanmac machine worked on the Flotation Systems job from August 1 until the 17th?

(Testimony of Arthur T. Snyder.)

A. I could not say definitely, no.

Q. Did you see it there in August?

A. As I recall, Mr. Shannon's machine, or the Shanmac Company's machine was in the vicinity either of the Central California Construction Company job or the Flotation Systems job at all times from May 28th, I should say, until sometime around the 1st of September.

Q. How far was it from the Central California Construction Company job to the work that was being done by the Flotation System?

A. Approximately 2500 feet.

Q. If the machine was working on the Central California Construction Company job and it was 2500 feet away from the Flotation job, you could tell at a glance whether or not the machine was doing that Flotation work or Central California Construction Company work, could you not?

A. Not always. There was one of our lines that went out to the pier, passing right by some lines that Mr. Pollia was laying for the Central California Construction Company. The main part of our job, where we installed our tanks and pits and so on, was about 2500 feet from the boathouse, and, as I say, the pipe lines very closely paralleled one another, and from the location of the Flotation Systems office, looking out of the window, it would have been impossible to tell down there on the pier what job the machine was working on.

Q. Did you have several piles of pipe?

(Testimony of Arthur T. Snyder.)

A. Yes, we had a stock pile.

Q. That pipe was to be used on the Flotation Systems job? A. Yes.

Q. How was it handled?

A. As I recall, Mr. Pollia had some kind of a truck, about a ton and a half, with a bar on the back [206] of it, and he would back up and load it on the truck.

Q. Wasn't the Shanmac machine used for the purpose of loading that pipe?

A. I do not recall, it might have been.

Q. You don't recall much about the use of this machine, do you?

A. You mean the Shanmac machine?

Q. That is the only one I am interested in.

A. I saw it day after day, working on our project, and working on the Central California Construction Company project.

Q. You said that this Exhibit, the check that was paid, the endorsement of which you said on, "Pay to the order of Shanmac Company," covered the period up to August 1.

A. I believe so, yes.

Q. If the machine operated on the job after August 1, it would be impossible for this check to have been in payment for that time?

A. I think you are right in that respect, that is, the check would not be in payment for work done on or after that date.

Q. If a portion of the time that he is claiming

(Testimony of Arthur T. Snyder.)

for is from August 1 until August 17, this check has no relevancy, at all, in so far as payment of that application is concerned, has it?

A. As to whether it has any relevancy or not is a matter I could not say. I believe that would be a matter of law, I don't know.

Q. And that check of August 16, 1940, which you testified paid only up until July 31, could not have been payment to the Shanmac Company for the operation of the machine from August 1 to August 17, could it? A. I suppose not.

Q. You know it could not have been?

A. It sounds logical.

Mr. Stark: We wish to offer in evidence, if your Honor please, the signed time cards for the operation of this machine. There is a group of nineteen cards which show the hours, the days, the operators, the oilers, the number of gallons of gas used, the number of the shovel, signed by the sub-contractor. [207]

Mr. Harloe: May I see those, Mr. Stark?

The Court: We will take our recess of ten minutes at this time, and you can look those over.

(After recess:)

Mr. Stark: We ask that they be marked in evidence.

Mr. Harloe: We object to them, in view of the previous testimony that no segregation was ever indicated showing the amount of work done on the Flotation project, and the amount of work that was

(Testimony of Arthur T. Snyder.)

done on the Central California Construction project. They do not show which job they were on. We object to them on the ground they do not show whether they were on the Flotation job or on the Central California Construction Company job. I have no objection to the offer in evidence, if they are received in evidence, that they show that Mr. Shannon's company did perform that amount of work for Mr. Pollia.

Mr. Stark: On this Flotation Systems job?

Mr. Harloe: No, they do not show that. That is the objection they do not show what he did on the Flotation job. There is no question, from the testimony, that the Shanmac Company performed work on the boathouse job for Mr. Pollia.

The Court: The cards speak for themselves, as to what they show. They may be admitted for what they are worth.

(The time cards are marked "Intervenor's Exhibit 3.")

Cross Examination

By Mr. Doyle:

Mr. Doyle: Q. Mr. Snyder, in response to a question before recess by Mr. Harloe you said that the work that Pollia was to do was all under the original contract, which included work in the pits, with the exception of F pits, which were extra work orders. Do you recall that?

A. I believe that is correct.

Q. At some stage in the proceedings you wanted

(Testimony of Arthur T. Snyder.)

some weldings done [208] in the pits, and so there will be no question about it, excluding F pits?

A. We have gone into that; if the welding was done outside of the pits for certain fixtures that were installed later in the pits.

Q. I asked you specifically, you wanted some welds done in the pits. I am not talking about outside of the pits.

A. There were some change orders that involved additional welds in the pits, yes.

Q. Did you ask Mr. Pollia to do the additional welding in the pits?

A. Yes, that work had to be done.

Q. Did you ask Mr. Pollia to do the welding in the pits?

A. We requested him to do the extra welds in the pits, is my answer to that.

Q. When you requested Mr. Pollia to do the extra welds in the pits, what did Mr. Pollia tell you?

A. He said he would not do it unless he had an order.

Q. All right, what did you tell him?

A. I asked him how much he would charge us for doing such extra work.

Q. Did you go back to your copy of your contract on file and point out to Mr. Pollia that the welding that you wanted done was in the original contract?

A. No.

Mr. Harloe: Just a moment, I object to the

(Testimony of Arthur T. Snyder.)

form of that question, because the witness has testified that it was extra work.

A. We had no occasion to refer to the contract, because the particular welding that I asked Mr. Pollia to do was extra work, because of change orders we had received from the Navy.

Mr. Doyle: Q. Isn't it true, in any event, that Mr. Pollia told you that he would not do any welding in the pits?

A. No, that is not true. He said that he would not do the [209] extra welding caused by change orders.

Q. Well, then, Exhibit 12, the letter of August 1, 1940, Exhibit 9, August 7, 1940, and Exhibit 10, August 23, 1940, they specify extra work, lineal foot price, unit prices. Look at them.

A. Which do you refer to?

Q. All three of them. Do you recognize them?

A. Yes.

Q. Isn't it a fact that Mr. Pollia, the very first time any welding in the pits came up, told you that there had to be a separate charge for it?

A. No, I do not believe so.

Q. You do not believe so. Are you just guessing, or do you know?

A. I am reasonably sure. I cannot recall any question ever coming up as to whether Mr. Pollia was to do or was not to do the welding in the pits, as shown by the original plans and specifications, and there never was at any time any question. Any

(Testimony of Arthur T. Snyder.)

argument or discussion we had concerning extra work was caused by subsequent change orders as received by us from the Navy.

Q. Now, the extra work caused by the change orders, didn't the Flotation write this letter of August 23, 1940, Plaintiff's Exhibit 10?

A. That is entirely correct.

Redirect Examination

Mr. Harloe: Q. I will just ask you this general question: All of the work mentioned in those exhibits 9, 10, and 12, just shown you by Mr. Doyle, all of the work set forth on those was not in the original plans and specifications, was it?

Mr. Doyle: That is calling for an interpretation of the letter, and asking the witness to pass upon a question that your Honor has to pass upon.

Mr. Harloe: Q. You know of your own knowledge whether or not that work was originally in the plans and specifications, do you not? [210]

Mr. Doyle: The same objection.

A. Might I see the statement there, the statement of partial payment, before I answer that question? I don't know the number of the exhibit.

The Court: I will permit the question, subject to the objection.

A. The two orders to Mr. Pollia, I believe the two you have there, the letter dated August 23 and the letter dated August 7, the intent of those letters that they were caused by extra orders received from the Navy, and with regard to this statement

(Testimony of Arthur T. Snyder.)

of August 1, at the top of the statement is an estimate of the work completed on the original contract, and then in addition are set down additional items caused by these change orders as authorized by orders from us.

Mr. Harloe: Q. Mr. Snyder, I will show you a check dated July 9, 1940, made out to Andrew Pollia, and endorsed by him and endorsed by Shanmac Company, and a check of July 8th, payable to Andrew Pollia, and by him endorsed to Shanmac Company, for \$695. Do you know why the check of \$949.74 was given on July 9?

A. No, I don't know the exact reason.

Q. Mr. Snyder, prior to or about the time that these payments were made to Mr. Shannon, or Shanmac Company, did you have a conversation with either Mr. Shannon or Mrs. Shannon, with reference to the amount of money paid them by Mr. Pollia, and, if so, for what job it was?

A. Not at the time of the first payment we made to Mr. Pollia.

Q. Not at the time of the first payment?

A. No, not for work up to July 1; there was no question at that time. We simply asked Mr. Shannon how much money he had coming, and he gave us a statement, and requested that one of our checks to Mr. Pollia [211] be made out in that amount.

Q. You did have a conversation with Mr. or Mrs. Shannon, or both of them, did you, with re-

(Testimony of Arthur T. Snyder.)

spect to the amount of work they had done for Mr. Pollia? A. At a later date.

Q. At a later date? A. Yes.

Q. Do you remember approximately when that was?

A. I would estimate, as near as I can remember, sometime in September.

Q. Sometime in September? A. Yes.

Q. Where was that conversation held?

A. At the field office at Alameda.

Q. Do you know who was present?

A. Mr. Shannon, at one time—Mr. Shannon was present on the job practically at all times, and he and I discussed it at the Air Base numerous times, and one time Mrs. Shannon came over to the office at Alameda and called on me, and Mrs. Shannon and I discussed it in the presence of Mr. Frazier.

Q. What was said by Mrs. Shannon relative to the payment made by Flotation Systems to Shanmac Company for work done on both contracts?

Mr. Stark: To which we object as immaterial, irrelevant, and incompetent.

The Court: The objection is good.

Mr. Harloe: Q. Did you have a conversation with Mr. Shannon? A. Yes.

Q. Relative to payment for work that was done by him for Mr. Pollia on both jobs?

A. Yes, Mr. Shannon and I.

Mr. Stark: We submit he should identify when and where this conversation took place.

(Testimony of Arthur T. Snyder.)

Mr. Harloe: Q. Approximately when did this conversation [212] take place?

A. The conversation was at the Alameda Navy Air Base.

Q. Approximately when?

A. The first came up approximately in the month of September, 1940, I would say approximately the 15th of September, that is, the first discussion, and there were frequent discussions between Mr. Shannon and myself after that, also at the Navy Air Base.

Q. You, at that time, requested from Mr. Shannon a detailed statement of the number of hours that Mr. Shannon had worked on your job?

A. That is right.

Q. And he at that time never gave it to you, as I understood your testimony? A. No.

Q. Did he tell you why he could not give it to you?

A. He said that he had rented the machinery to Mr. Pollia, and as far as his interests were concerned he assumed that Mr. Pollia would pay him for it, and therefore he never kept a record of the exact location where the machine was used, whether Mr. Pollia used it on our job or on the Central Construction Company job.

Q. What did he tell you in that conversation relative to the payment by Flotation Systems for work by Shanmac Company on the job?

A. He said that the only money he had ever re-

(Testimony of Arthur T. Snyder.)

ceived for work on the Alameda Air Base was received on our check.

The Court: This is testimony that has already been covered.

Mr. Harloe: I do not think that has been brought out, it may have been.

The Court: The record will show if you have any doubt about it.

Mr. Harloe: It may be, but I think I had not brought it out. That is all.

Mr. Stark: Are you going to introduce the last check you [213] showed the witness?

Mr. Harloe: I will offer in evidence, if your Honor please, a check dated July 9, for \$949.74, made payable to Andrew Pollia, and endorsed by Shanmac Co. by T. G. Shannon.

(The check was marked "Defendants' Exhibit F.")

Recross-Examination

Mr. Stark: Q. That check for \$949.74 is dated July 9? A. Yes.

Q. What period of time would that have been paid for?

A. As I recall it, that was one of a number of checks that Mr. Pollia requested in payment, for his first partial payment, for work up to July 1.

Q. If the machine that Shanmac Company operated on the job in July, after July 1, this check could not have been a payment for the time after July 1?

(Testimony of Arthur T. Snyder.)

A. I do not believe so, Mr. Stark.

Q. You know so, don't you?

A. I am reasonably certain, yes.

Q. You have not the slightest idea as to the number of hours the machine worked on either the Flotation Systems job or the Central California Construction Company job, have you?

A. Oh, I could make a rough estimate of the number of hours they worked on both jobs, and also a very rough estimate on the segregation of the time between the two jobs.

Q. You kept no record of that, however?

A. I kept no actual record of it, it was not our business to do so.

Q. You say that you asked the Shanmac Company to get a statement at one time?

A. After this argument with Mr. Pollia came up.

Q. Did you get that statement?

A. No—I received a statement from Mr. Shannon, but Mr. Shannon admitted that the statement was for the balance of payment due him for all the work that he had done with his machinery at the Alameda Air Base. [214]

Q. Where is that statement?

A. I may have it in my files, there. I do not seem to have it here. I may have turned it over to Mr. Harloe.

Mr. Stark: Have you got it, Mr. Harloe?

Mr. Harloe: I am looking now.

(Testimony of Arthur T. Snyder.)

Mr. Stark: Q. You say that statement certified or showed that Mr. Shannon had been paid, or the Shanmac Company had been paid for all the work done at the Alameda Air Base?

A. The statement did not certify that, but when I questioned Mr. Shanmac that was the advice he gave me, and that was the reason that the bill was in dispute.

Q. Was the machine still on the job at that time?

A. At the time I received the statement?

Q. Yes.

A. I do not believe so. I think the work had been completed.

Q. What was the date of the statement?

A. Not having it here, I don't know.

Q. You know it would be very important in this litigation if what you say is true, it would be the end of the case, as far as Shanmac is concerned, wouldn't it?

Mr. Harloe: I object to that.

Mr. Stark: This witness has said my client told him he had received all of the money that was coming to him, and I am in the position that my client claims that he had not received it.

The Witness: That is not the statement I intended to make, exactly, Mr. Stark.

Q. Let us get exactly what you intend to say.

Mr. Doyle: That was the witness' interpretation of the conversation.

(Testimony of Arthur T. Snyder.)

A. The statement I intended to make was that we received a bill [215] from Mr. Shannon's company for \$1000 and some odd, I do not recall exactly, and Mr. Shannon advised us that this bill was paid—if this bill were to be paid it would pay him for all the work he had done on the Alameda Navy Air Base.

Mr. Harloe: We have found it.

A. You have found the statement?

Mr. Harloe: Yes.

Mr. Stark: Q. He told you that this was all he had coming?

A. He told us, as I just testified, that if he received the amount of that bill that would pay him for all the work he had done at the Alameda Air Base, that was all he had coming on both jobs.

Q. Exactly, if we received \$1040.73, covered by this bill here in counsel's file, which has not been paid, we will receive all of the money that we have coming on this job.

A. On the Flotation Systems job and Central California Construction Company.

Q. No, on the Flotation Systems job.

A. No.

Q. You know it? A. No, I do not.

Q. I may have misunderstood you, but I understood you to say that Mr. Shannon told you that he had gotten all of the money that was coming to him.

(Testimony of Arthur T. Snyder.)

A. No, you misunderstood me. What I meant to say was, if he received that one thousand odd dollars that is on that bill that he would have received all the money.

Q. That clarifies it in my mind.

Mr. Harloe: Do you want to offer this in evidence?

The Court: Was this last document testified to by the witness offered in evidence?

Mr. Stark: I simply showed him a document which was given to me by counsel, which is an exact duplicate of my Exhibit No. 1, which was offered the first day of the trial. [216]

The Court: It is already offered in evidence?

Mr. Stark: Yes.

Mr. Harloe: Now, I am going to offer these two in evidence.

Q. I show you a bill made out by Shanmae Company to Andy Pollia, for work in the sum of \$695, and on the bottom it says, "Paid in Full July 9, 1940." A. Yes.

Q. Is that the bill for which the check of July 8 was made payable? A. That is correct.

Q. Now, then, I show you a bill dated August 1, 1940, and it has on the bottom thereof, "Paid E. M. Shannon." Do you know who E. M. Shannon is? A. No, I do not.

Q. But, in any event, that is the bill for which the check of \$1213.43 was paid?

A. That is right.

(Testimony of Arthur T. Snyder.)

Q. Did you ever receive any bill showing the amount of \$949.74, paid through Pollia to Shanmac?

A. No.

Q. Covered by the check of July 9?

A. No, I did not.

Q. Now, these two bills that I have showed you, Mr. Snyder, set forth the days and hours of work?

A. Yes.

Q. Is there anything on these bills from which you can tell how many hours was work on the Flotation project, and how many hours was work on the Central California Construction project?

A. No, there is not. The bills were made out to Andrew A. Pollia, and there is no designation that I can see as to where the work was done.

Mr. Stark: Q. What is the date of those bills?

Mr. Harloe: One was June 28, and the other August 1. We offer these in evidence.

Mr. Stark: Are those the ones that were paid?

Mr. Harloe: Yes.

Mr. Stark: Q. Did I understand you to say you don't know [217] whether the machine had worked for you or for somebody else? A. Yes.

Q. What did you pay the bill for?

Mr. Harloe: Just a minute. That was not the testimony. The question I asked was, was there anything on those bills that would show the amount of work by hours, on the Flotation System, and the amount of work on the Central Construction Company.

(Testimony of Arthur T. Snyder.)

Mr. Stark: Let me reframe the question.

The Court: They may be admitted.

(The bill of June 28, 1940 was marked "Defendant's Exhibit G," and the bill of August 1, 1940, was marked "Defendant's Exhibit H.")

Mr. Stark: Q. You testified there was nothing on these two bills just handed you by your attorney to show what hours the machine worked for the Flotation System and the hours it worked for somebody else. A. That is right.

Q. Don't you know that all of the hours on that bill were for you?

A. We assumed that at the time we paid the bills, that they were.

Q. Because you paid him the money for it?

A. We assumed that, yes, but at a later time we were told otherwise by Mr. Shannon.

Q. At a later time you were told otherwise by Mr. Shannon? A. Yes.

Q. When was this conversation?

A. The period of time I received that information was sometime in the vicinity of September 15, 1940.

Q. Did you make any memorandum of that conversation?

A. I do not believe so, we went over it so many times.

Q. Look here, Mr. Snyder, your money was paid over to Mr. Pollia for the use of the Shanmac

(Testimony of Arthur T. Snyder.)

machine, money for the operation of [218] that machine, on some job that was a complete stranger to you. Isn't that right?

A. That is what we learned later, yes.

Q. Mr. Shannon told you that? A. Yes.

Q. He was the owner of the machine?

A. Yes.

Q. Did you make any record, or notes, or give any information to your employer to that effect?

A. Yes, I wrote and we discussed that, but I am not positive just what is in that correspondence file, that is two years ago. There may be something in that file if you want me to look.

Q. That was after the controversy arose, was it not? A. It was during the controversy.

Q. After you began to interpret the Pollia contract?

A. That was after the controversy over the Pollia contract had arisen.

Mr. Stark: That is all, Mr. Snyder.

Cross-Examination

By Mr. Doyle:

Mr. Doyle: Q. You say now that Mr. Shannon told you in some conversation that the bills in question were partly for the Pollia job, the Flotation Systems job, and partly for the Central California Construction Company job?

A. That is correct.

Q. Did you ask Mr. Shannon, or did you state to Mr. Shannon in that conversation that the Shan-mac bills were only addressed to Pollia?

(Testimony of Arthur T. Snyder.)

A. I believe I did, yes.

Q. Did you tell Mr. Shannon at that time, or did you state to him why the California Construction Company job was not mentioned on that bill, also? A. Yes.

Q. What did he say?

A. He said that he was renting the equipment to Mr. Pollia and he assumed he would get that money, and he had no occasion to give any description, he merely addressed the bill to Mr. Pollia because he was doing the work for Mr. Pollia, [219] and he was not interested in where Mr. Pollia used his equipment, or what job he worked on.

Q. When you had that information from Mr. Shannon, did you ever talk to Mr. Pollia about this matter? A. Yes.

Q. What did he say?

A. He refused to give me any description of the time between the two jobs.

Q. When was that?

A. Along about that time, September 15, as I recall.

Q. Isn't it true, Mr. Snyder, that before you passed a Shanmac bill for payment that it had to have Pollia's O. K. for the work done on the Pollia job, or, putting it in another way, didn't any bill that you got from Shanmac bear Mr. Pollia's O. K.?

A. That is right. Mr. Pollia also had both checks.

(Testimony of Arthur T. Snyder.)

Mr. Doyle: I move that the latter part be stricken.

The Court: That may go out, that latter remark.

Mr. Doyle: Q. You say that there were changes in the plans; did I understand you correctly?

Mr. Harloe: I am going to object to this line of examination at this time, it has nothing to do with the testimony of the witness on the Shanmac bill. He has gone into that before.

Mr. Doyle: Mr. Harloe took him back and asked him about any changes in the plans and specifications.

Mr. Harloe: I will withdraw the objection.

Mr. Doyle: Q. Did I understand you to say that there were or were not changes in the plans and specifications?

A. There were changes in the Navy plans from time to time during the job, yes.

Q. Now, what were the changes in the plans, change of location, mechanical equipment, or what?

A. Well, the majority of the [220] changes in the plans were as to D pit.

Q. Would you call those mechanical changes?

A. Yes, I would call them mechanical changes.

Q. What do you mean by a mechanical change?

A. By mechanical change, I mean the original plans showed certain fittings, certain valves, certain special equipment to be installed and connected up in a certain manner.

(Testimony of Arthur T. Snyder.)

Q. What did those changes involve?

A. The change involved a few fittings, putting in additional pipe fittings over and above what the original plans indicated.

Q. When were those changes made?

A. I do not have the exact date.

Q. Approximately.

A. Well, there were quite a number of them.

Q. When was the first one?

A. The first change I would say came up approximately about the middle of June.

Q. Of 1940? A. Of 1940.

Q. In what pit?

A. I believe the first change that came up was in E pit.

Q. Did you ever talk to Mr. Pollia about those changes, and about the departures, so-called?

A. Oh, yes, we were in frequent conversation about all of these changes.

Q. What did Mr. Pollia tell you about that?

A. He said every time anything of this nature came up that was not in the plans and was not in the specifications, and he was not going to do it unless we gave him an order to do it.

Q. Did you give him an order?

A. Yes, it has been submitted in evidence.

Q. These changes were not in the original plans?

A. They were not shown on the original plans, no, they are not shown in detail.

Q. Are you interpreting the original plans?

(Testimony of Arthur T. Snyder.)

A. What do you mean? [221]

Q. I understood you to testify that when you were up there on the job you were very careful in looking at and construing the original plans.

A. Yes.

Q. These changes that you have just testified to, were they on the original plans?

A. No. There would have been no occasion for any order to be given if they had been.

Q. Isn't it a fact, Mr. Snyder, in view of your last answer, that those changes could not have been in contemplation and were not reduced to writing in the contract of May 28, 1940?

A. Those changes were not contemplated at the time that the original contract was signed.

Mr. Harloe: I do not want to make an objection, and I have no objection to your going on forever, but I want to make this statement, that we have admitted that those were extras, they were an extra charge, and we have given you credit for them as extra charges in addition to the contract.

Mr. Doyle: Q. When was the next change?

A. There were many changes, so many I could not state when.

Q. Give me any of the numerous other changes.

A. Well, one of the changes that came up about that time was a change in the D pit which involved the elevation at which the pipe line came into the pit, made it necessary to raise the elevation of the pipe line and do some additional fittings in this pit.

(Testimony of Arthur T. Snyder.)

That occurred somewhere around, I would say, between the 1st and 15th of August.

Q. Did you issue an extra order on that?

A. Yes.

Q. That was not on the original plans and specifications?

A. No, the original plans showed the pipe coming into this pit at one elevation, and subsequently we found out we had to bring it in at a different elevation. [222]

Q. That was the same type of order that you issued, 270, 281, 284, 1150, and 1207?

A. I would have to see that letter to verify it.

Q. That was Exhibit No. 10. Mr. Pollia told you he would not do the work unless he got an extra order on it, is that it?

A. That is right.

Further Redirect Examination

Mr. Harloe: Q. He told you he would not do the work because of the fact that it was not in the original contract? A. Yes.

Q. He was not going to do it under the original contract, and wanted an extra order for it?

A. Yes.

Q. And you gave it to him?

A. That is right.

Q. At the price he requested? A. Yes.

Further Recross-Examination

Mr. Doyle: Q. When he told you that was not included in the original plans and original con-

(Testimony of Arthur T. Snyder.)

tract, did you go into your office and check your copy of the contract and verify Mr. Pollia's claim?

A. I checked the plans, not the contract.

Q. Did you check the contract?

A. No, because we assumed at all times that Mr. Pollia had entered into a contract to install this pipe work and pipe fittings as per plans, and we always referred to the plans and not the contract.

Q. Irrespective of your assumption, you could have checked your contract?

A. We could have, but we had no occasion to do so.

Further Redirect Examination

Mr. Harloe: Q. It could not have been in the original plans and specifications, could it?

A. No, because it was changed.

Q. Of course, it was a change in the plans and specifications at a later date? A. It was.

Mr. Harloe: That is all. [223]

Further Recross-Examination

Mr. Doyle: Q. Mr. Snyder, since adjournment have you personally looked for this inventory that you prepared for Mr. Pollia before Mr. Pollia left for Los Angeles?

A. Well, we have three inventories in our file, and there was one inventory that I thought was it, but Mr. Pollia denies it.

Q. Did you send down to the Los Angeles office to find out if they had one? A. No.

(Testimony of Arthur T. Snyder.)

Q. Did you check with the Los Angeles office to ascertain whether or not it was down there?

A. No. We have the files on the case, here, and to my knowledge there are no additional files in Los Angeles.

Mr. Doyle: That is all.

Mr. Harloe: That is all. That is the defendant's case, your Honor.

Mr. Doyle: We will recall Mr. Ceriat.

EUGENE CERIAT,

Recalled for Plaintiff in Rebuttal.

Mr. Doyle: Q. Mr. Ceriat, you were on the job at Alameda before this contract of May 28, 1940 was entered into? A. Yes.

Q. How long did you stay on the job in Alameda before you returned to Los Angeles?

A. I stayed on the job until—how do you mean?

Q. How long were you with the job?

A. Until I quit the job?

Q. Yes.

A. I think it was August 31, because I was going back and forth all the time.

Q. You were there from at least May 27, 1940, to your best recollection, until August 31, 1940?

A. Yes. [224]

Q. Now, when you left the job, what was the per-

(Testimony of Eugene Ceriat.)

centage of construction work that had been completed, either by Flotation or by Pollia?

A. The pipe work was all completed when I left the job, that is, nearly all completed, the pipe, and they were only starting to do the work in the pits.

Q. When you say they were starting to do the work on the pits, to whom do you refer?

A. The Flotation.

Q. All that remained was to install the special equipment?

A. That is right.

Q. Do you believe that Mr. Pollia had completed 80 per cent. of the work when you left the job?

A. I do not think so.

Q. Now, you were in Los Angeles the morning that Mr. Pollia went down to get some money, weren't you?

A. Yes.

Q. You were at the Flotation office?

A. Yes.

Q. Who was there when the question came up about this money?

A. I was in my office and they called me.

Q. Who are "they"?

A. Mr. Fred Kalte, and Jim Henry, and Pollia.

Q. What was the conversation when you came into Mr. Henry's office, or Mr. Kalte's office?

A. Well, they brought out the contract and talked about the difference in the contract, and after the conversation Mr. Henry said, after examining the contract they would be probably forced to pay Mr. Pollia.

(Testimony of Eugene Ceriat.)

Q. What did everybody say? Give us the substance of what Mr. Henry said, what Mr. Kalte said, what Mr. Pollia said, and what you, yourself, said.

A. Mr. Henry, I believe, asked me what I thought about the contract, and he said we would have to pay Mr. Pollia, he said Mr. Pollia is the only business man who knew about the contract and we did not.

Q. Anything else?

A. I think they gave Mr. Pollia a thousand [225] dollars, and asked him to come back the next day.

Q. Did you hear any statement by anybody at that conversation that Mr. Pollia was gypping them, or chiseling? A. No, I did not.

Mr. Doyle: Take the witness.

Cross-Examination

Mr. Harloe: Q. I will show you Defendant's Exhibit No. B, Mr. Ceriat. Is that your signature at the bottom of it? A. Yes.

Q. This is a letter written by you to the Flo-tation Systems on May 23, 1940?

A. Yes. It was not written by me, but I signed it.

Q. You signed it, anyhow? A. Yes.

Q. It was written at your direction?

A. Yes.

Q. Now, in this letter you say, "We have just received another bid from Mr. Pollia, who gave

(Testimony of Eugene Ceriat.)

us the previous bid of 89 cents per foot for laying all gasoline and water lines as follows."

A. Yes.

Q. "He proposes to do all the pipe work on this job, complete and according to Naval inspections."

A. Yes.

Q. "Including installation of all water piping and fittings, installation of all gasoline piping and fittings, including welding. Furnish and install all 12-inch clay pipe and fittings, complete, for the drain line at the total depth of 6 feet; for each extra foot in depth add \$1.60 per cubic yard of additional dirt removed." A. That is right.

Q. "Install equipment in all pits."

A. That is right.

Q. "Except the fueling pits."—those were the pits that were marked "F" that were not in his contract? A. Yes.

Q. "Complete, including the installation of small tanks, including one pit A, one pit B, two pits C-2, 8 pits D, and 16 pits E. [226] All of this work is to conform strictly to the plans and specifications. He will furnish all equipment, welding tools, rock subbase under piping and back-fill. He proposes to do this work for a total lump sum price of \$16,040. In effect, this bid takes care of everything outside of burying tanks, complete work, electrical work and installation of special equipment in pit F." A. Yes.

(Testimony of Eugene Ceriat.)

Q. Under this proposal he made you he did not propose to do any work in pit F, which were the fueling pits. Is that correct? A. Yes.

Q. At the bottom of the letter there is a reference to union regulations, that has nothing to do with the draft of the contract, that is so, is it not?

A. Yes.

Q. It says, "We find that the union regulations here will require that we employ a local steam-fitter to lay out the steel pipe, in addition to a qualified welder to do the actual welding."

A. Yes.

Q. Now, Mr. Ceriat, pursuant to that letter which you wrote to Flotation Systems, you got a letter back signed by Mr. Kalte, didn't you?

A. That is right.

Q. This is a copy of the letter is it?

A. Yes.

Q. It says, "We have just received your letter regarding the quotation of Mr. Pollia for the sum of \$16,040 for doing all the pipe work, ditching, etc." A. Yes.

Q. Then it says, "After a conference, we find that you should have Mr. Pollia write up a contract in triplicate immediately, stating everything clearly, also including the wrapping of pipe joints after welding, also the wrapping of the welding fittings and painting of pipe in the pit boxes outside of fueling pits, which we understand we are to do." Now, in the contract [227] you have drawn

(Testimony of Eugene Ceriat.)

up you did provide for the welding, as suggested there, didn't you?

Mr. Doyle: Read the rest of it.

Mr. Harloe: Q. "In other words, if you are thoroughly satisfied with the wording of his contract and that everything is included that you think should be, you can forward us the copies for signature and return one copy to him."

A. Yes. When I received that letter I asked Mr. Pollia to draw up a contract.

Q. You asked Mr. Pollia to draw the contract?

A. Yes.

Q. Thereupon, after this contract was drawn up it was sent down to the Flotation Systems, was it not, Plaintiff's Exhibit No. 2? A. Yes.

Q. On the second page this "Accepted by Eugene Ceriat, Date 5/28/40," that is your signature?

A. Yes. I asked him to draw this contract.

Q. Now, then, Mr. Ceriat, this contract provides for the welding and the wrapping of joints and for the "painting of all piping installed by us inside of pit boxes A, B, C, D, and E," as suggested in the letter received from Mr. Kalte, didn't it?

A. Yes, but I don't know why they changed the wording to all piping to the pit. I believe——

Mr. Doyle: Just a minute.

Mr. Harloe: Let him finish.

Mr. Doyle: He stated "I believe." I move to

(Testimony of Eugene Ceriat.)

strike that out as not responsive to the question.

Mr. Harloe: How do you know it is not responsive? I asked him the question.

Mr. Doyle: He has answered your question.

Mr. Harloe: I ask that the witness be permitted to answer [228] the question.

Mr. Doyle: He has already answered it.

Mr. Harloe: That is your interpretation. May the witness be permitted to complete his answer?

The Court: I will permit it subject to the motion.

Mr. Harloe: Suppose I withdrew that question and ask it over again.

Q. Mr. Ceriat, this letter that you received from Mr. Kalte after you had sent down your letter stating what Mr. Pollia proposed to do, and that letter stated, as you have already testified, that you should have Mr. Pollia provide in his contract that he should paint the fittings inside of the pits and in the boxes, and also wrap the welded joints, that you provided for in this contract, "including welding and testing all joints and all connections to pit boxes."

A. To pit boxes—all connections to pit boxes.

Q. What does it mean? It says, "welding and testing all joints and all connection to pit boxes."

A. That is right.

Q. Welding and testing all joints and all connections to pit boxes? A. Yes.

Q. Now, it also provides for the wrapping of the joints, doesn't it? A. To the pits.

(Testimony of Eugene Ceriat.)

Q. Wrapping of joints—is there any joint wrapping inside of the pit boxes?

A. I do not think so.

Q. Mr. Ceriat, you knew that in your letter to Mr. Kalte, stating Mr. Pollia's proposal, that he proposed to do all the fittings in the pit boxes, didn't you? A. Yes.

Q. There was no question in your mind that that is what he agreed to do, is there?

A. Well, there was not in my mind, no.

Q. There is no question in your mind, that that is what he agreed [229] to do—your conversations and negotiations were with him—when you wrote this letter to the Flotation, that he agreed to put all the fittings in the pit boxes?

A. No.

Mr. Doyle: You asked the witness if that was in his mind and he said no.

Mr. Harloe: Let us go back to it again.

Q. If you say "No," why did you write in that letter down to the Flotation Systems, "Install equipment in all pits." Answer this question first. If you had no conversation with Mr. Pollia about installing equipment in the pits, why did you put it in the letter that he proposed to do it?

A. It would be my proposal to Mr. Pollia.

Q. It would have been your proposal to Mr. Pollia. Your proposal to Mr. Pollia was that he put all the equipment in the pits?

A. It would be up to him to do that.

(Testimony of Eugene Ceriat.)

Mr. Doyle: Q. Did he accept your proposal as to the work that you wanted him to do, the work in the pits? A. No.

Mr. Harloe: Q. Don't you say he proposed to do that? A. No, I proposed to do that.

Q. No, you did not. I will read the letter again. I will be fair with you. It says, "He proposes to do all the pipe work on this job, complete and according to Naval inspection, including installation of all water piping and fittings. Installation of all gasoline piping and fittings, including welding. Furnish and install all 12-inch clay pipe and fittings complete for the drain line, at the total depth of 6 feet; for each extra foot in depth add \$1.60 per cubic yard of additional dirt removed. Install equipment in all pits." A. Yes.

Q. You wrote that, didn't you? A. Yes.
[230]

Q. And you wrote that because you had a conversation with Mr. Pollia that that is what you wanted him to do?

A. That is what I wanted him to do.

Q. Why did you say he proposed to do that if he did not?

A. Well, I don't remember exactly, but that is the proposal I sent in to the Flotation, and then when they told me to have Mr. Pollia draw the contract and explain everything that he wanted to do, I asked Mr. Pollia to draw this contract, and we started discussing it, I had my own contract, which I had in longhand writing there, which I

(Testimony of Eugene Ceriat.)

suggested to Mr. Pollia, and Mr. Pollia did not accept it. So, finally I was very busy with my other construction work, and Mr. Snyder was working with the mechanical work, and more familiar with it, so I left it with Snyder and Mr. Pollia to get together to draw a contract satisfactory to both, and if I remember right they got together and settled together what they were going to do.

Q. They settled together what they were going to do?

A. Yes, Mr. Snyder and Mr. Pollia.

Q. Then you say Mr. Snyder's testimony is all wrong when he said he had no negotiations with Mr. Pollia for the doing of this work?

A. Mr. Snyder had negotiations with him to draw the final contract—Mr. Snyder and Mr. Pollia, I was not even present then.

Q. But when you mentioned that Pollia was to install the equipment in all pits, you were in charge of the work at that time, weren't you?

A. That is right.

Q. You were the one that wrote to them about the contract? A. Yes.

Q. You told them that Mr. Pollia proposed to do that, didn't you?

A. He proposed to do that.

Q. He had proposed to you he would do that, hadn't he? A. Yes. [231]

Q. And you wrote it to Flotations, because he had proposed it? A. That is right.

Mr. Harloe: That is all.

The Court: We will take our recess until two o'clock.

(A recess was here taken until 2:00 o'clock p. m.) [232]

Afternoon Session
2:00. O'clock P. M.

ANDREW A. POLLIA,

Recalled by Plaintiff in Rebuttal.

Mr. Doyle: Q. Mr. Pollia, you heard Mr. Snyder testify with reference to the items contained in Exhibit B, attached to the Answer of the Defendant Flotation Systems, as to the hose reels, lumber purchased, damage to tools and equipment, etc., in the sum of \$705.72. That item on that list of Exhibit B, the installation of the hose reels was not done by you, was it, in the sum of \$150?

A. That is what they have charged up against me.

Q. Did you damage any of the equipment?

A. No.

Q. Now, the hose reels were to be installed in the pits when they were received? A. Yes.

Q. And they were not installed by you by reason of the fact that they had not been received?

A. Yes.

Q. You told the Flotation Systems when they received them you would install them?

A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Were you ever advised that they had been received? A. No.

Q. And you did not install them for that reason?

A. That is right.

Q. You heard some testimony about some changes in the plans and specifications. Were there any changes in the plans and specifications?

A. No, there was not.

Q. Have you a blueprint covering some of the work in this case? A. Yes.

Q. By the way, where did you get that blueprint? A. Mr. Snyder gave it to me.

Q. When did you get it?

A. Sometime after I started work on [233] the job.

Q. Now, referring to the blueprint that you have in your hand, will you disclose to his Honor on the blueprint what diagram corresponds with this diagram on 1210-43-3?

A. This diagram, here was prepared by Mr. Snyder, and it is identical to the one prepared by the Bureau of Yards and Docks.

Q. Were there any changes in either one of these?

A. The only change that was made was that the Flotation made a change in the equipment; it had to be installed identically the way the Bureau of Yards and Docks designated it.

Q. In other words, the blueprint was prepared by Mr. Snyder in accordance with the original?

(Testimony of Andrew A. Pollia.)

A. In strict accordance with the original plans.

Q. What is the date on this blueprint?

A. It is dated May 15, 1940.

Q. That was before you entered into the contract of May 28, 1940? A. Yes.

Q. When was there mention made about the changes in that equipment, when did that first come up—about when did it first come up?

A. A few of these pits were constructed, and the Aqua man was ready to install some special equipment.

Q. What happened?

A. They required some nipples, and flanges installed inside of the pits.

Q. Who were "they"?

A. The Flotation Systems.

Q. Was that mentioned to you?

A. They came to me and asked me to install these 8-inch nipples and flanges and 6-inch nipples and flanges.

Q. Who was "they"? A. Mr. Snyder.

Q. When Mr. Snyder came to you the first time and asked you to make these installations, what happened?

A. I asked him who [234] was going to pay for it.

Q. What did he say?

A. He said, "Well, give us a price and we will give you an order to do the work."

Q. Did you give him the price? A. Yes.

(Testimony of Andrew A. Pollia.)

Q. Did you get some order to do the work?

A. Yes.

Q. I will show you now Plaintiff's Exhibit 12, dated August 1, 1940, Plaintiff's Exhibit 9, dated August 7, 1940, and Plaintiff's Exhibit 10 dated August 23, 1940. Will you please explain these extra work orders in connection with your conversation just related with Mr. Snyder about the extra work?

A. The first extra work ordered was as shown on my August 1 statement, which related to these 8-inch and 6-inch nipples installed in pits, known as pits E; then from then on additional work orders were given to complete other work in the various pits. On these others in Exhibit 9 and 10, the first one was in July, which we rendered a bill for the work performed in July, which we were paid for in the early part of August.

Q. Every time extra work came up you got an extra work order? A. Yes.

Q. You prepared a statement on August 29?

A. Yes.

Q. Plaintiff's Exhibit 11? A. Yes.

Q. That was the time you went down to Los Angeles to get some money? A. Yes.

Q. Your original contract price was \$16,040?

A. Yes.

Q. Now, the work that you did up to that time on the extra work orders, according to the statement that you prepared, showed that there was a

(Testimony of Andrew A. Pollia.)

balance due you of how much money at that time?

A. Do you mean as to the contract, or as to the extra work orders I got?

Q. Both as to the contract and work orders when you rendered this [235] statement?

A. This statement making application for payment No. 3, the balance on the contract entered into May 28, 1940 to me was \$2154.89. During the month of August I installed extra \$208 on one, \$165, and one of \$107.60, and some wrapping of some pipe joints covered by a letter issued August 23, 1940, of \$1760, the rental of the Shanmac crane to the Flotation Systems for \$404, the statement of work done to date in A pit, \$163.95, work done up to date in B pit, \$163.95, the complete work done to date in C pit, two of them, \$160.50, complete work done in D pit, eight of them, \$1233.40, and complete work done in E pit, 16 of them, \$892. That made the amount due of \$7493.14. They advanced me on payroll \$1574, leaving the amount due of \$5919.14.

Q. Deducting the extra work orders from the amount that was due you when you went down to Los Angeles, did the Flotation Systems owe you money, or did you owe the Flotation Systems money?

A. Well, if I did not have the money due me on the extra work orders I would have owed the Flotation Company money when I presented this application for payment No. 3.

(Testimony of Andrew A. Pollia.)

Q. Was there any question raised about that?

A. No.

Q. That was the day you got the \$1000?

A. Yes.

Q. When you had this conversation in Los Angeles about this statement of August 29, 1940 and the inventory that had been prepared for you, did Mr. Kalte, Mr. Henry and yourself and Mr. Ceriat discuss it at the time? A. Yes.

Q. You heard Mr. Kalte's testimony about the conversation you had down there about that money?

A. Yes.

Mr. Harloe: If your Honor please, I do not want to object, but this is not rebuttal, this was gone into in the case in chief. He testified all about that meeting, and everything else, [236] and there is no rebuttal to it, and I object to it on that ground.

The Court: Unless it is directed to certain testimony of the witness.

Mr. Doyle: I am coming to that, your Honor, having laid that foundation.

Q. You heard Mr. Kalte testify that he thought that they were being chiseled or gypped. Did you hear that testimony? A. Yes.

Q. Was that said?

A. Mr. Kalte never said that.

Q. When did you complete your work?

A. August 1.

Q. Was it August, or October?

A. October 1.

(Testimony of Andrew A. Pollia.)

Q. Do you know, as a matter of fact, that on October 1, 1940, your attorney, Mr. Tamba, wrote a letter to Mr. Harloe and advised Mr. Harloe that the work had been completed? A. Yes.

Mr. Doyle: Have you got that letter, Mr. Harloe?

Mr. Harloe: What date?

Mr. Doyle: October 1, 1940.

Mr. Harloe: I think so.

Mr. Doyle: Q. While Mr. Harloe is looking for that, Mr. Pollia, isn't it true that not only was there not such a conversation about gypping or chiseling, but that Mr. Kalte phoned to a Mr. Hamilton to get you a job? A. Yes.

Q. Who was he?

A. He was connected with the Continental Pipe & Engineering, I believe, he is one of the owners, and they had undertaken to do all the pipe line work at the Hamilton Air Base, and Mr. Kalte arranged for me to go over there and discuss it with him.

Mr. Doyle: Have you the letter of September 25, 1940, from Mr. Tamba?

Mr. Harloe: No, I have not got that, Mr. Doyle.

Mr. Doyle: Q. Pursuant to Mr. Tamba's instructions to you [237] when you completed this job, he wrote this letter to Mr. Harloe?

A. Yes.

Mr. Harloe: Are you offering that in evidence?

Mr. Doyle: Yes.

(Testimony of Andrew A. Pollia.)

Mr. Harloe: I object to it as immaterial, irrelevant, and incompetent. It in a communication between attorneys in relation to settling a case. It is addressed to me and not to the Flotation Systems at all. If it is addressed to me it would not be binding on them, and therefore, I object to it. I do not see the relevancy of it, I do not want to clutter up the record. It is a letter from Mr. Tamba to me, informing me that the work had been completed.

The Court: Is there any other matter than that that you want?

Mr. Doyle: I think we could have Mr. Tamba come in and testify.

Mr. Harloe: He would not testify. How could he testify to what Mr. Pollia told him, not in our presence, and then writing me a letter? If you want a stipulation, I will stipulate there is a statement by Mr. Pollia that he finished his contract, save and except the installation of some hose reels that he did not install by reason of the fact that the Flotation Systems did not have the material on hand to install.

Mr. Doyle: That is all we want.

Mr. Harloe: If you want that you can have it.

Mr. Doyle: No further questions—Might I interrupt for just a moment? In view of that stipulation, Mr. Pollia, when was the first time that you heard any question about whether or not you had completed the work?

(Testimony of Andrew A. Pollia.)

A. This morning, here in court.

Mr. Doyle: That is all. [238]

Cross Examination

Mr. Harloe: Q. I show you these orders 273 and 274, that was entirely extra and separate from any work under the contract—entirely separate—is that right? A. Yes.

Q. Now, these other work orders, is it your contention, Mr. Pollia, that the work that is mentioned in those work orders was shown on the plans and specifications? A. What is that again?

Q. I am asking you, do I understand you to testify that the work done on these extra work orders was shown on the plans and specifications?

A. Oh, no.

Q. Then I misunderstood you. The work done on these extra work orders is not shown on these plans and specifications? A. No.

Q. They are extra work for which you were entitled to be paid at the prices agreed on between you? A. Yes.

Q. Coming to your letter of August 29, "Complete work in pits A, B, C, D, and E."

A. Yes.

Q. Was the work done by you as shown in your statement shown on the plans and specifications?

A. Was the work done by me?

Q. Yes. I am not trying to mislead you. You actually did that work?

(Testimony of Andrew A. Pollia.)

A. Yes, I did that work.

Q. Now, was that shown on the plans and specifications, or on that blueprint?

A. That was shown on these plans.

Mr. Harloe: That is all.

Mr. Doyle: That is all. Plaintiff rests.

Mr. Harloe: The defendant rests.

Mr. Stark: The intervenor rests.

The Court: You may proceed with the argument.

[Endorsed]: Filed Dec. 23, 1942. [239]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, defendants above named hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 1st day of July, 1942.

JOHN D. HARLOE

Attorney for Appellants

1005 deYoung Building,
San Francisco, California

[Endorsed]: Filed Dec. 23, 1942. [240]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Appellants designate for inclusion the complete record and all the proceedings and evidence taken in the action.

Points relied upon by appellants:

The evidence is absolutely insufficient to sustain the judgment and the Court erred in the interpretation of the contract.

JOHN D. HARLOE

Attorney for Appellants

[Endorsed]: Filed Dec. 23, 1942. [241]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

It is hereby stipulated and agreed by and between the parties hereto that the record on appeal of the above-entitled case shall consist of the Complaint and the Answer thereto, the Complaint in Intervention and the Answer thereto and the testimony of the witnesses, and the Bill of Particulars.

Dated: Jan. 5th, 1943.

JOHN D. HARLOE

Attorney for Appellants

J. J. DOYLE

Attorney for Appellee

[Endorsed]: Filed Jan. 7, 1943. [242]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 242 pages, numbered from 1 to 242, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States for use of Andrew Pollia, Plaintiff, Flotation Systems, Inc., a corporation, et al. No. 21905-W, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Thirty-six Dollars and Fifteen Cents (\$36.15) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 30th day of January, A. D. 1943.

[Seal]

WALTER B. MALING

Clerk

WM. J. CROSBY

Deputy Clerk

[Endorsed]: No. 10359. United States Circuit Court of Appeals for the Ninth Circuit. Flotation Systems, Inc., a corporation, and United States Fidelity and Guaranty Company, a corporation, Appellants, vs. United States for use of Andrew Pollia, T. G. Shannon and B. W. Mackie, co-partners doing business under the fictitious name and style of Shanmac Co., Appellees. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 1, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10359

FLOTATION SYSTEMS, INC.,

Appellant,

vs.

UNITED STATES for use of ANDREW
POLLIA,

Respondent.

POINTS RELIED UPON BY APPELLANT

I

Erroneous interpretation of the contract materially effecting the rights of the parties.

II

That the evidence is insufficient to support the findings or the judgment.

JOHN D. HARLOE

Attorney for Appellant

[Endorsed]: Filed Feb. 5, 1943. Paul P. O'Brien,
Clerk.

